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THE INDIGENOUS PEOPLES OF BRAZIL

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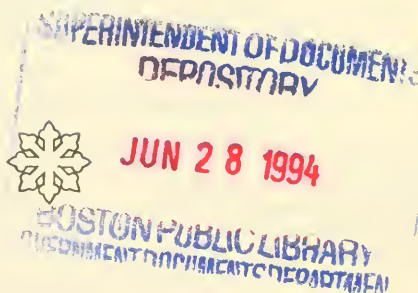
HEARING
BEFORE THE
SUBCOMMITTEE ON
WESTERN HEMISPHERE AFFAIRS
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JULY 14, 1993

Printed for the use of the Committee on Foreign Affairs

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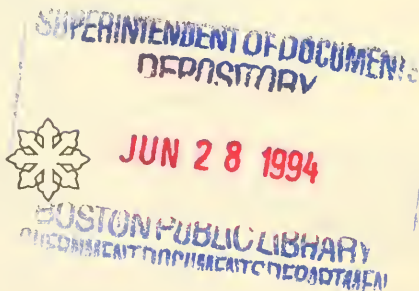
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THE INDIGENOUS PEOPLES OF BRAZIL

WEDNESDAY, JULY 14, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 2:05 p.m. in room 2172, Rayburn House Office Building, Hon. Robert G. Torricelli (chairman of the subcommittee) presiding.

[The statements and colloquy of Messrs. Pizzatto and Megaron were delivered through the use of interpreters.]

Mr. TORRICELLI. The subcommittee will please come to order.

An issue that received a great deal of attention at one time, the plight of the indigenous peoples of Brazil, appears almost overnight to be largely forgotten.

It has been replaced by the tragedies that have developed in other parts of the world and now command its headlines. The situation in Bosnia has been referred to as genocide; however it was only a few years ago that this same term was used to describe what was happening to indigenous peoples in the Amazon.

DISILLUSIONMENT WITH LEADERSHIP' CLAIMS

We all want to believe what our leaders have told us. Former President Collor came to Washington and made strong and hopeful statements claiming the rights of the indigenous peoples of Brazil were now respected; their lands were protected from invasion by miners and loggers; and tax laws that encouraged homesteading in the Amazon have been repealed.

There is, however, real fear that despite these promises and the hope they raise that they do not represent the whole story.

Some good speeches were made and decrees were issued. By the end of the day, the tragedy continues. We hear miners continue to invade indigenous territories, bringing with them deadly diseases and mercury that poisons rivers. Loggers continue to harvest mahogany illegally destroying everything in their path, including the way of life of thousands of indigenous people.

THE DEVELOPMENT/PROTECTION DILEMMA

Finding a solution a solution to this tragedy will not be easy. Brazil's economy has not performed well in recent years, droughts have driven poor farmers from the northeast into the Amazon, and millions suffer in abject poverty in the slums of Rio. This has spawned deep resentment about reserving millions of hectares for

a few thousand Indians while millions in the country at large must suffer.

How to balance development and the protection of indigenous rights and territories is not an easy question. It has confounded nations, including our own, for centuries.

The answer to this problem is clearly not to destroy Brazil's heritage and rob indigenous people of their ancestral homes. The United States made that mistake, and we regret it. Our indigenous people have been decimated, their culture and pride destroyed, and their cumulative knowledge and experience lost forever.

URGENCY IN SOLVING THE ISSUE: A JOINT EFFORT

The challenge is to find creative and viable alternatives to address the needs of all. The Brazilian Government, in consultation with indigenous groups and other organizations, must develop a well thought-out and realistic strategy that will protect indigenous people's rights and lands and promote economic growth and opportunities at the same time.

This will take considerable political leadership and courage. It may also take significant international assistance to help implement. But, it must be done. Time is running out.

We, of course, as a nation do not speak as one who handled this issue well. We have been part of the problem. It is not out of a lack of respect for the sovereignty of the rights of Brazil but rather out of friendship that we hope we can, with other nations, improve upon the mistakes, the lessons, the experience people in our own country suffered in the past.

Mr. Smith.

Mr. SMITH. Thank you very much, Mr. Chairman. I would join you in welcoming our very notable panel of expert witnesses in our hearing today. This is an appropriate follow-up to the meeting we had in the spring when the United Nations Goodwill Ambassador of the year for Indigenous People, Rigoberto Menchu, was in town.

Using Brazil as a case study will be helpful in addressing the broader, international issues affecting indigenous peoples, and the U.S. policy with respect to foreign assistance to such regions and in support of indigenous people's rights.

BRAZILIAN CONSTITUTIONAL COMMITMENTS

The 1988 Constitution of Brazil explicitly expresses Brazil's commitment to ensure that lands traditionally occupied by the indigenous population are intended for their permanent possession and that they have exclusive rights to use and benefit from the riches of the soil and water resources. As with any constitutional commitment, however, it is meaningless without the political will to enforce the provisions.

I have reserved judgment about the progress on implementation of these objectives which we can expect with the new administration in Brazil. I will be most interested in hearing the testimony of our panel today regarding that very matter. Understandably, there is anxiety about the Brazilian Government's ability to fulfill its obligation to demarcate all remaining Indian lands by October of this year.

Mr. Chairman, the violations of human and civil rights of indigenous peoples range from violence and discrimination, to the lack of commitment on behalf of political leaders to fulfill promises and legal obligations which are designed to protect indigenous populations.

Hand in hand with these concerns, national and international policy has the challenge of balancing the pressures of economic development and the needs and rights of indigenous peoples.

As human and civil rights for the indigenous peoples are protected, I believe the long-term effects on the environment will be more positive. Certainly protection for the livelihood of indigenous peoples will require a balanced combination of measures which are culturally and ecologically sensitive, coordination with organizations comprised of indigenous people, and continued international encouragement and prodding—when necessary—through multilateral organizations and circumspect multilateral and bilateral trade policy.

Mr. Chairman, this is a good hearing. It is timely. I look forward to hearing from our experts.

Mr. TORRICELLI. Mr. Menendez.

Mr. Ballenger.

[No response.]

Mr. TORRICELLI. I would like to welcome our witnesses today. I know some of you have traveled great distances but it is our hope to rekindle the debate in this country, the consideration of an American contribution to helping with the issue of indigenous peoples not simply in Brazil but indeed around the world. This is the first time this committee has had an opportunity to consider this issue and talk about it internally since President Collor was here a couple of years ago.

We are, therefore, very grateful for each of you participating today in our work. I would like, if I could, to introduce each of those participating: Luciano Pizzatto, Rapporteur of the Special Commission on Indigenous Rights, Chamber of Deputies of Brazil; Megaron Txucarramae, Tribal Leader, the Metuktire Tribe of the Kayapo Nation; Stephan Schwartzman, Environmental Defense Fund; Steven Tullberg, Indian Law Resource Center.

Mr. Pizzatto, welcome. Perhaps if you would begin, please.

STATEMENTS OF LUCIANO PIZZATTO, RAPPORTEUR, SPECIAL COMMISSION ON INDIGENOUS RIGHTS, CHAMBER OF DEPUTIES OF BRAZIL

Mr. PIZZATTO. [Through interpreter.] Just an introduction before the testimony. The testimony you have before you, I would like to thank you for the invitation to come to the U.S. Congress and understand that the U.S. Congress understands that the problems that we have in Brazil with indigenous people are not very different from the problems the indigenous people face around the world and in the United States as well.

THE INDIGENOUS SITUATION

Perhaps the major difference between Brazil and other developed countries is that we still have time to rescue a little bit of the dig-

nity of the indigenous populations in our country and try to establish a more fair system into the societies that live in Brazil today.

This statement represents my personal assessment of the condition of the Brazilian Indian communities and some aspects of our environment.

As a forester and now as a politician, I have been confronted with the various aspects of the main problem of Indian communities—the respect those communities and their traditions deserve vis-a-vis the unavoidable integration to other societies and their habits.

Disregarding any ideological component in the setting up of programs, institutional policies, and even specific Indian legislation, I think that in Brazil, the greatest challenge to be addressed will be how to maintain respect for the Indian will and how to apply this will to the relationship with a modern, dynamic community that each day permeates all areas of Indian life independently of our intentions or interests.

This Indian will, that differs from one community to another and may even change in the same community, is now supporting the new Indian leadership, which is making use of their traditional interlocutors, particularly certain NGO's, to try to negotiate with the government authorities and other interested parties, even foreign countries, in a direct, transparent, and objective way, so that traditional spokesmen are reduced to a supporting role.

NECESSARY STEPS TO BE TAKEN

Due to this situation, we have to address such new challenges as the following: if we want the Indian communities to have freedom to maintain and exploit their preserves, we should guarantee that the financial results will be managed by those communities directly. This will be possible in some cases but impractical in others.

The possibility of the end of the State's patronage of the Indians cannot happen without the guarantee of minimal conditions of maintenance of the traditions and culture of each tribe, but at the same time should support an advance to a more equal relationship between the Indians and other communities.

In these two examples, one can feel the complexities of the Indian situation in Brazil at the moment when the Congress is debating a new Indian statute which may be approved this fall and thereafter will govern all legal aspects of Indian life.

The new statute should be an instrument of progress, should represent the result of a minimal consensus, the interests involved and take into consideration the three proposals already in discussion in the Congress.

LAND ISSUE

Concerning the situation of the traditional Indian lands, the period established in the 1988 constitution for the regularization of Indian land ownership throughout the country will end. This Indian land totals 87 million hectares, approximately 217.5 million acres or more than twice the area of the State of California in 504 Indian territories belonging to about 250,000 individuals from 200 tribes. The regularization is being delayed by difficult institutional

conditions, lack of financial resources, and difficulties in solving regional conflicts.

Moreover, the Indian preserves, especially in the north of the country, include areas with enormous natural resources, such as forests, minerals and biogenetic resources and the pressures to exploit them are natural and often irresistible.

PROBLEMS YET TO BE ADDRESSED

Taking into consideration all of these factors, my opinion on the main questions of interest for this committee is this: First, there has been an improvement in the awareness of the government and public opinion concerning the importance of the question of indigenous peoples, but there still exists a wide range of conflicting opinions over the dimensions of the Indian claims to preserve areas that should be addressed by a major clarification effort, easing of tensions and finding of alternatives in order to avoid stimulating conflicts, and to promote full awareness among the whole Brazilian people and the interested foreign nations.

Second, FUNAI, the National Indian Foundation, and other involved ministries, particularly the ministries of health and education, do not have financial and human resources to fulfill adequately with their missions.

Third, the self-sufficiency of many Indian communities through the administration of their natural resources would be possible if we could establish clearly how, in legal and institutional terms, this administration would be regulated.

Mr. TORRICELLI. Mr. Pizzatto, we have to suspend for a couple of minutes because we have a vote in progress. We will return very shortly. Excuse us for a moment.

Mr. PIZZATTO. OK. Thanks.

[Recess.]

Mr. MENENDEZ [presiding]. We will reconvene. There will be several votes. In an attempt not to interrupt hearing testimony, we will proceed.

Mr. Pizzatto, please continue.

Mr. PIZZATTO. Mr. Chairman, in the interests of time, I would like to ask your permission to summarize and register the rest of his written statement. I would like to highlight three of the points of his written statement.

FOCUSON THREE POINTS

Mr. MENENDEZ. Without objection, so ordered.

Mr. PIZZATTO. Item four. The mining and illegal timber exploration are still the major problems that have led to the destruction of Indian preserves in the country. In the first case, mining is done by gold prospectors, thousands of them, who are not working only by hand but are effectively small enterprises which are mechanized, own small planes and have great environmental impact.

In the second case, dishonest timber merchants utilize the Indian preserves for raw material sources without any reforestation and forest management.

Item five, the government has shown political will and has taken steps to restrain the mining and illegal timber exploitation but the

dimension of the problem is much greater than the capacity to control it.

In environmental terms, Brazil has made progress reducing the areas of deforestation and the intensity of forest burning (approximately 1 million hectares per year, according to INPE/NASA-1993) implementing some pilot programs of forest management and even wildlife protection, beginning the demarcation of extraction preserves and discussing these problems with society. It seems that in these cases, there is more political interest than in the Indian question itself.

Even considering this observation, which I regard as more positive than the situation a few years ago, we still urgently need ways to bridge the huge gap between the need to balance ecological, economical and social functions and the reality of poverty and hunger in the country.

I consider the remainder of my statement already read and I want to thank you very much for the opportunity.

[The prepared statement of Mr. Pizzatto appears in the appendix.]

Mr. MENENDEZ. Thank you, Mr. Pizzatto. We have your statements. We have included it as per your request in the record as do all the members. I know there is an interest, as well, in addition to listening to all of the panelists but specifically to listen to our next panelist; so the chairman has asked us to hold on a few minutes. They should be back from the vote any moment. Then we will continue.

[Recess.]

Mr. TORRICELLI [presiding]. Congressman Pizzatto, my apologies for missing the end of your testimony. Fortunately, we have it to review.

At this point, Megaron Txucarramae, if you would please proceed.

STATEMENT OF MEGARON TXUCARRAMAE, TRIBAL LEADER, THE METUKTIRE TRIBE OF THE KAYAPO NATION

Mr. MEGARON. I would like to thank the committee for this invitation to come here and tell you about the situation of the Indians.

I realize that the committee's time is limited; and so I would like simply to ask to read the English translation of my deposition. With the committee's permission, I will proceed to do that.

Mr. TORRICELLI. Certainly.

Mr. MEGARON. I must say, although the rights of the indigenous peoples of Brazil are legally recognized, those rights being disrespected. This is because our rights conflict with the interests of powerful groups who want to illegally exploit our lands and natural resources. Therefore, the indigenous question is almost always invisible, becoming known to society only when violent clashes occur or when there is organized pressure.

Thus, our problems are not a priority for the government. All concrete measures are delayed, and every solution is hard won. The government is almost always absent or late, and does not enforce the laws relating to indigenous rights. It simply seems to me, it lets time pass, counting on the disappearance of our peoples, or betting that we will be forgotten.

I would like to say that I understand that our rights of citizenship include the recognition of our difference in the first place, and, as a consequence, the right to special support from the State in all matters in which we become involved with non-Indians.

JUDICIAL LETHARGY

The constant delay of judicial proceedings concerning violent attacks against indigenous persons and communities amounts to judicial impunity for such acts, with the complicity of public institutions.

I would like to cite two flagrant examples: The massacre of 14 Ticunas Indians—men, women, and children—killed in an ambush by loggers in October of 1988. The 17 persons accused of committing the crime have until today never been judged and continue in liberty.

The case of the Guarani leader Marcal de Souza, who was assassinated in 1983 at the instigation of a rancher who had invaded the lands of that people. Despite all the evidence, the rancher was recently tried and found not guilty. The prosecution is seeking a new trial.

The Brazilian constitution of 1988 granted indigenous peoples the right to their traditional lands and stipulated a period of 5 years—which is about to end this October—for the government to demarcate all of our areas. The indigenous peoples of Brazil live in more or less 520 different areas. Of these, the government has demarcated around 280. However, there are still at least 170 areas for which the political decision of the government is pending—which is to say that those areas are still not recognized.

Among these areas, there are some such as the Indigenous Areas of Alto Rio Negro in Amazonas and Raposa Serra do Sol in Roraima that have not been demarcated by the government because of intense pressure on the part of local economic interests. Besides these, there are some 70 other areas whose boundaries have already been established by the Ministry of Justice but have not been physically demarcated due to lack of financial resources.

As can be seen, the government will not fulfill its constitutional obligation.

If this were not enough, practically all the indigenous areas in the country—demarcated or not—are being invaded by ranchers, gold miners, and loggers, and the government has taken no action to definitively remove them.

On the rights to the natural resources and wealth of our lands, we have been victims of predatory processes of mining and logging of tropical hardwoods in our areas.

When the impetus for these invasions has not come from the government, they occur as a result of governmental inaction and complacency. I think that the gold miners and loggers have simply copied the government, which has always in these cases made use of corruption, coercion, and blackmail.

A perfect example is the case of my relatives, the Kayapo of Gorotire. (Translator's note: Megaron is a Kayapo himself, I should explain.) In 1981, they took action and expelled the gold miners who were trying to establish themselves in their undemarcated territory. The government then bargained with my kinsmen in the fol-

lowing manner: You let the miners work and we will demarcate your land. Of course everyone agreed. The Gorotire had for a long time wanted their land demarcated and had continually struggled for this.

The result of this is that, today, 100 percent of the Gorotire are highly contaminated by methyl-mercury, according to the results of a scientific investigation done by the Fundacao Mata Virgem, the Rain Forest Foundation. The Fresco river, the village water source, is without life, silted and polluted.

This calamitous situation is repeated in various other indigenous areas. The government, in spite of knowing this, has until now done nothing to correct its error, to carry out its constituted duty, and defend the indigenous territories and patrimony, futhermore, it does not seem disposed to do so.

GENETIC MISMANAGEMENT

Aside from the environmental and moral losses, there remains our concern with the future of the indigenous peoples victimized by this assault, recently aggravated by the inclusion of our "in situ" gene banks, developed and conserved over millennia at no cost to occidental civilization.

These resources are being appropriated by your scientists and businessmen, with no return or respect for our long-term labor of selection and maintenance of these genetic resources. On the contrary, the traditional peoples of the world are likely to pay dearly for the products created through quick manipulation of their ancient genetic resources.

In their avarice for quick and easy profits, supported by the avidity and lack of awareness of the consumers of the so-called First World, regional economic interests are sacrificing equally precious plants and animals that, I am sure, could serve us all, and not only the rich.

Help us help ourselves. There is still time.

(Translator's note: speaking of time, Megaron made it clear to me, he wanted to read this without himself speaking it, so there would be extra time for discussion. He is happy to answer questions.)

Mr. TORRICELLI. Thank you.

[The prepared statement of Mr. Txucarramae appears in the appendix.]

Mr. TORRICELLI. Thank you for your statement.

Mr. Schwartzman, if you would please.

STATEMENT OF STEPHAN SCHWARTZMAN, ENVIRONMENTAL DEFENSE FUND

Mr. SCHWARTZMAN. I am Steve Schwartzman, anthropologist of the Environmental Defense Fund. I am testifying today on behalf of EDF, a national environmental organization with 200,000 members, and of the National Wildlife Federation, the largest conservation organization in the country, with 5 million members. I thank you for the opportunity to address this subcommittee, and for your concern with the situation of Brazil's indigenous peoples. I know this concern is shared by many of the members of EDF and NWF.

Mr. Chairman, the fate of Brazil's indigenous peoples is a global concern today because the most basic human rights are at issue. There are 200 indigenous societies in Brazil, speaking 170 different languages and numbering 250,000 people. In this century alone, some 80 entire societies have vanished in Brazil, victims of disease, massacres, forced labor, and the plunder of their natural resources. There are still about 50 uncontacted Indian groups in the Brazilian Amazon, groups that have no regular contact with the national society. Many of these peoples are at risk of extinction because their lands are invaded by predatory loggers and ranchers, or desperate miners and colonists.

The fate of Brazil's Indians is also a global concern because it is intertwined with the fate of the world's greatest repository of biological diversity, the Amazon forest. The same radically unsustainable model of development that has devastated Brazil's Indians, has left 1 percent of the country's landowners in control of half of the agricultural land, while half of the landowners occupy only 3 percent of land, and very quickly, it has also deforested about 10 percent of the Amazon, mostly for the short-term profit of that tiny elite.

The forest peoples have extensive knowledge of ecosystems that could become the basis of the next biotechnological industrial revolution, in benefit of Brazil and the world, and many of these indigenous groups are actively seeking to halt the depredation of their resources. We in the U.S.—and this subcommittee—can do a greater deal to help them.

EFFECT OF U.S. HARDWOOD DEMAND

The U.S. is the second largest consumer of Brazilian mahogany, and the mahogany trade is on the cutting edge of the destruction of the Amazon and the indigenous peoples. Many of the most pressing threats to the survival of isolated Indians, the most violent of conflicts, most scandalous pillage of indigenous resources, and most flagrant omission of governmental authorities, are results of the predatory exploitation of mahogany.

In Mato Grosso, indigenous rights groups fear a bloodbath as Nambiquara Indians desperately resist armed incursions into their lands by loggers.

In Rondonia, two uncontacted tribes, living in the Guapore Biological Reserve—which should have been protected under a World Bank project—are facing a catastrophe as illegal loggers supported by local politicians plunder the reserve. A similar tragic situation is related in Dr. Turner's statement on behalf of the American Anthropological Association on the Awa-Guaja of Maranhão. Such examples could be multiplied.

One reason that mahogany exploitation is so destructive is that there is no incentive for any other kind of utilization—of mahogany or other hardwoods. American consumers can help to create better incentives, but only with information on the products that are available.

One immediate, and simple, step toward creating incentives for sustainable, and more socially equitable, use of the forest resources, is the labeling of tropical timber and tropical wood products by species and country of origin. This was proposed in H.R.

2854 by Mr. Kostmayer, and I urge you, Mr. Chairman, to consider, with your colleagues, introducing such a measure.

In addition, the subcommittee could call on the CRS to prepare a study of the effects of mahogany extraction on indigenous groups and the Amazon forest, as well as on how mahogany gets to the American consumer. Such a study could very usefully inform further action.

Finally, Mr. Chairman, the U.S. is the largest shareholder in the World Bank, a major international actor in the Amazon. In my prepared statement, I go into more detail about those projects in which we think the bank could be doing much more to see existing legislation is enforced.

The Congress has played a critical role in promoting reforms in the bank and should monitor very closely ongoing bank projects in the Amazon and other multilaterally financed development projects effecting indigenous populations.

Thank you for your interest in this matter.

[The prepared statement of Mr. Schwartzman appears in the appendix.]

Mr. TORRICELLI. Mr. Tullberg

STATEMENT OF STEVEN M. TULLBERG, INDIAN LAW RESOURCE CENTER

Mr. TULLBERG. It is very appropriate for Congress to examine the issue of indigenous peoples' rights in the context of our country's foreign policy and human rights commitments, all countries of this hemisphere, including our own, need to reform their Indian laws and policies.

POLICY ADJUSTMENT

The United States and other countries have made significant progress in moving their Indian affairs policies toward peaceful, legal political policies in which democratic rights and freedoms are respected; but in all countries, there are still serious flaws that need urgent correction.

We especially commend this committee for soliciting the direct participation of Brazilians in today's hearings. The participation of an indigenous representative is particularly praiseworthy. In that spirit, I submit with my prepared remarks two statements on indigenous rights by Brazilians who work every day on indigenous rights issues in Brazil.

I respectfully ask that their statements also be included in the record.

Mr. TORRICELLI. Without objection, we will place them at this point in the record.

Mr. TULLBERG. Brazilians will necessarily be at the front of all efforts to overcome what is typically called Brazil's Indian problem. Viewed from the Indian's perspective, it is actually the Indian's problem with Brazil. The Indians present no military, economic nor political threat to the stability or survival of Brazil; the very opposite is true.

In plain language, Indian land and resources are being confiscated and thousands of Indians have been dying from the diseases and violence the invaders have brought into Indian territory.

There are two arguments commonly put forward by those who would deny Brazilian Indians their rights. One argument is the U.S. and other countries have no right to criticize Brazil's Indian policy because of their own past and present mistreatment of Indians and other indigenous peoples in their own countries. The simple response of course is that two wrongs do not make a right. I believe, Mr. Chairman, you rightly indicated that in your opening remarks.

Moreover, as we struggle to overcome past and present wrong doing and shortcomings, we cannot remain silent in the face of serious injustices anywhere in the world. The universality of human rights was just reaffirmed last month at the human conference on human rights.

The other argument we have heard is that the Indians of Brazil have too much land, more than they can profitably use, more than they should rightfully have for themselves in a country with millions of poor and marginalized people. I submit that this is a pernicious and silly argument. It is a variation on the old and discredited legal doctrine of *terre nullius*, which is Latin fiction—legal fiction which said Indian lands were in fact vacant lands—and the discovery doctrine.

Today these colonial doctrines are almost universally disparaged. Moreover, in practical terms, the argument that densely populated and needy people are entitled to confiscate their neighbors' lands and resources, its fundamentally an invitation to lawlessness and instability. Is populous El Salvador entitled to Honduras? Does Chicago get the Navajo reservation? The argument goes nowhere.

Indian people are guaranteed the right to equal protection under the law and the right to their property under Article 21 of the American Convention. Indian peoples, like all others, are entitled to their lands, their resources, their self-determination, their very survival.

BRAZILIAN EFFORTS AND SHORTCOMINGS

Fortunately, those Brazilians who would sweep aside basic human rights of Indian peoples have not been able to block law reform efforts in their country. Honorable and courageous Brazilians worked shoulder to shoulder with Indian leaders in the 1970's and 1980's to develop a remarkably advanced constitutional framework for indigenous rights.

The Federal Prosecutor's Office, Federal judges, nongovernmental organizations such as the Nucleus for Indigenous Rights and other NGO's, have made great strides in recent years to enforce the law.

But directly threatening Brazil's progress, adversaries of Indian rights have very recently mounted a serious challenge against that promising legal order. Permit me to give some examples.

On the eve of the Rio UNCED meeting, President Fernando Collor demarcated Yanomami territory and removed the invading gold miners. We celebrated that accomplishment. Not long after, the government permitted thousands of the miners to return and to continue their devastation in Yanomami territory.

The government recently forced the resignation of Sydney Possuelo, the first president of FUNAI, the government's Indian of-

fice, who was trying to remove the miners. Today, some 700 gold miners are reportedly still inside Yanomami territory.

The government has failed to institute a comprehensive health care program to overcome the serious health emergency that it has created. Field data is incomplete, but at least 34 Yanomami died of diseases during the first 5 months of this year alone. Of 8,000 tested for malaria, 18 percent proved positive.

For several years, the Government of Brazil has ignored a request by the Inter-American Commission on Human Rights for an on-site investigation of the Yanomami case and other human rights situations that have been brought to the Commission's attention.

By continuously thumbing its nose at the Inter-American Commission, Brazil is failing to meet its human rights obligations and setting a very dangerous precedent that is damaging to the inter-American human rights system.

If Brazil can get away with this, what country cannot get away with it?

The Brazilian Justice Minister and Brazilian President have failed to process and ratify demarcations that are already on their desks. Miners, loggers, settlers have been invading Indian lands with impunity.

Although many of Brazil's Federal judges are doing the best to uphold Indian rights, there is a disturbing recent development where some Federal judges have begun ruling that invading settlers may remain on Indian lands while asserted title claims are adjudicated, a process that can take years.

Finally, as has already been mentioned, there is a developing constitutional crisis concerning the failure to demarcate the indigenous lands of Brazil and opening up the possibility of a wholesale revision of the constitution which could gut the indigenous rights provisions and set back Indian rights in Brazil two decades at least.

In sum, the political will to uphold indigenous legal rights in Brazil is not evident at this time. And should Brazil fail to uphold the constitutional and legal rights of Indian peoples, that failure will be a setback for the rule of law and human rights in general and send a very unfortunate signal to the rest of Central and South America which is struggling to establish democratic rule of law.

U.S. ROLE IN CRISIS

What can the U.S. do to help restore a more promising future for indigenous peoples and human rights in Brazil? Let me itemize a few points as I conclude my testimony. The U.S. Governmental and non-Governmental organizations should work cooperatively with Brazil at the forefront of the effort to uphold the rule of law. This is not something new. It is not a new interference in the internal affairs of Brazil. It is a continuation of an honorable relationship going back to the military years during the struggle to establish a constitutional border in Brazil.

The U.S. should provide financial support to nongovernmental organizations, Indian rights groups, environmental groups, human rights groups through AID, the National Endowment for Democracy and other programs.

The U.S. should consider contributing to the G-7 program that provides funds for conservation in the Amazon region, some of which are demarcated for the—excuse me, for the demarcation of Indian lands.

I would second Mr. Schwartzman's remarks that the U.S. should vigorously uphold indigenous rights in its participation in intergovernmental organizations in this hemisphere and through those organizations should press for the provision of medical assistance which is desperately needed.

Acting through our Ambassador to the OAS and other diplomatic channels, the U.S. should urge the Government of Brazil to invite the Inter-American Commission on Human Rights to conduct the on-site visit that has long been requested. We should strengthen human rights reporting by upgrading country reports and making sure indigenous rights are adequately covered.

Finally, the U.S. should lead by a good example. This means closer scrutiny of U.S. Indian affairs at home and at the international level, it means leadership on the issue of indigenous rights and the development of stronger international legal standards.

At this moment, in this year of the World's Indigenous Peoples, there is a draft declaration on the Rights of Indigenous Peoples that is under consideration in the United Nations. The U.S. should take a leadership role in supporting a strong draft declaration; and I would urge respectfully this committee hold a hearing on the U.S.' position with respect to that draft declaration, perhaps in the fall.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Tullberg appears in the appendix.]

Mr. TORRICELLI. I want to thank each of the witnesses.

Mr. Pizzatto, you know we are in the awkward position of dealing with an issue which is within the boundaries of your country. We do so because the issue of indigenous peoples was handled so badly in our own country, that we simply seek to offer advice and assistance if necessary in a spirit of friendship. I trust that is understood.

Through the course of events, your country is one of the few that remains that still has a potential to deal with indigenous peoples properly and our generation is undoubtedly the last that will have a chance to deal with indigenous people properly.

Many of us felt a great optimism after President Collor was here several years ago. He spoke forcefully and we thought with real conviction about changing policies. There is now a great skepticism about much of what was said and done. I wondered if you could provide us with your own assessment of whether the necessary changes in tax laws, land claim laws have been made that can make a difference beyond the question of designation of indigenous lands, but simply changing the economics of land destruction?

Mr. PIZZATTO. I want to thank you once again for the opportunity and I am very happy to know that we can try to work out a solution together. I understand that is the purpose of the hearing today.

Your question is extremely complex because to change the picture in Brazil today involves not only one or the other law, but social, economic, and institutional changes in the framework.

I would like to emphasize and highlight that despite the current problems we have with the indigenous question in Brazil, there are a lot of political pressures from our own work that has been bringing progress to the indigenous problems.

I would like also to emphasize that in addition to the questions of demarcation, tradition, and cultural problems in the indigenous populations today, we are facing 87 million hectares spread all over the country and sometimes very close to already developed areas.

It is impossible to discuss the indigenous problems without seeing this in relation to the Brazilian modern society.

I have been questioning several indigenous tribes about if they want to manage their own natural resources. I am worried to realize that they, yes, want to manage their own natural resources; I think that is going to involve a vast array of complexities as well.

There are a lot of questions that need to be resolved. Who is going to manage or administer the actual resources in the province? The Brazilian Government? The Indians? These questions need to be resolved, especially if you put this in comparison to environmental problems that may arise from this management.

This question supersedes the routine questions of indigenous rights. I am going to be having to face the answers for these questions when I propose in the next few days when I get back to Brazil the new major indigenous statutes.

Mr. TORRICELLI. Tell me your sense of the politics, both in your Congress and in the country, about whether there is still a rising tide of sensitivity to dealing with this problem and accepting the costs of protecting both the land and indigenous people? Are the economic circumstances of Brazil undermining our objectives or is there an increasing level of sensitivity?

Mr. PIZZATTO. He understands that the interpretation of the legal rights that the old constitution granted to the indigenous and other minorities will not go backwards with the new constitution.

Mr. TORRICELLI. I am not talking about law. I am talking about the politics of the country.

Mr. PIZZATTO. Yes. The country, the government has a clear policy to demarcate and secure the indigenous rights and lands. But it is very hard, because the society doesn't understand that sometimes that is—tough decisions have to be taken, especially if you are dealing with white society and indigenous rights.

Mr. TORRICELLI. So the government, in fact, you think is ahead of the public's own perceptions?

Mr. PIZZATTO. Maybe in some areas. There is a general advance inside the government to secure the indigenous rights; but some segments of the government do not agree with each other. Sometimes there is a difference of opinion between the Federal and State Government.

Mr. TORRICELLI. Mr. Megaron, the designation in the Collor government of the indigenous lands, have they had any practical impact at all in your judgment? I know you are disappointed by the designations. Have they had any positive results? I am speaking to the large reserve to the north, the Yanomami reserve.

Mr. MEGARON. The President before President Collor, President Jose Sarney, divided the Yanomami area into very small areas called islands, and what President Collor did was put all these little fragmented islands together in one large reserve to demarcate that whole area.

President Collor also ordered to be demarcated one more large reserve of the Kayapo tribe, the kinsmen of Megaron. This was done in this past year.

President Collor confirmed legally a number of demarcated indigenous areas. The distinction is marking a survey on a map and the other is to legally confirm them as a proclamation of the President.

After Collor left office, the ministers of the government and the new President have not demarcated or homologized or confirmed one single area.

Mr. TORRICELLI. We know the process is not now going forward; but my question is for the demarcation that did take place in the everyday life of the indigenous people, protecting their lands, resources, and rights, while it is not perfect, has it made an appreciable difference?

Mr. MEGARON. Firstly, President Collor did have the courage to demarcate some large areas.

Mr. TORRICELLI. I am aware of that.

Mr. MEGARON. Then the question is what actual effects these demarcations had? He said, look, its extremely hard to find a case where there is demarcation without invasion.

Mr. TORRICELLI. I am aware of that. The question is whether or not, as a policy of the U.S. Government, it is a value to encourage Brazil to continue the demarcations if they are not of value. If we are being told that even if less than perfect they have value, then it is a sound policy for the U.S. Government.

If the demarcations are doing nothing but providing a public cover, then none of us want to be a part of it. So there is a reason why I persist with the question, even if I cannot get an answer.

Mr. MEGARON. The answer is, in essence yes, you should support demarcation. Look, if you do not support even demarcation, the Indians will be completely abandoned and the lands will be freely invaded and the wood and—

Mr. TORRICELLI. I understand. *You still want to be part of encouraging something that is nothing but a public relations cover.*

Mr. PIZZATTO, is it possible to compare the commitment of President Franco with President Collor's government, the failure of the new administration to continue with demarcations, is this simply due to the priorities of the new government? Or do you think there is an unfortunate contrast in priorities between the two Presidents?

Mr. PIZZATTO. Mr. Chairman, it is very hard to compare the two governments because this government is a result of a very difficult transition that was the impeachment of former President Collor. This government did not have time enough to prepare, plan, to go from Brazil.

Mr. TORRICELLI. Is it your expectation when the new administration is fully in place, there will be any contrast in their commitment with regard to indigenous people and Amazon development or is it not possible to know?

Mr. PIZZATTO. I certainly hope so. I hope the situation improves; but in the light of the very difficult economic situation in Brazil, notably inflation, that is drawing all the efforts of the administration to fight the economic situation.

Mr. TORRICELLI. I have to cast another vote. I will be back in just a few moments.

Excuse me.

[Recess.]

Mr. TORRICELLI. I apologize again for the interruption.

Mr. Megaron, I understand you wanted to speak. We are going to try to do this in a very efficient fashion, if everyone can try to be brief and get to the point.

Mr. MEGARON. I want to speak about the national indigenous park as an example of demarcation and what it can mean. In the big reserve of the Xingu, we do not have any problems with invading loggers or miners, none. We have some problems with hunters and fishermen, sport fishermen and hunters of animal skins.

But FUNAI is helping us guard the frontiers of our area. Just a short time ago, the Rain Forest Foundation for the division in Brazil helped us with money to establish guard posts along our frontiers. We have guards permanently living at these posts which are keeping, defending our borders against any invaders.

So we of the Xingu reserve are able to defend our demarcated area against these potential invaders, loggers, hunters.

Mr. TORRICELLI. Mr. Schwartzman, Mr. Tullberg, you heard me present the question. Is it a good policy for this government then, with regard to our concern for the Amazon region's indigenous people, to rest our policy not exclusively but at the first outset on continued demarcations, given the experience to date? Does it make sufficient difference?

Mr. SCHWARTZMAN. Demarcation of indigenous lands is a critical, necessary, but insufficient condition for protection of those lands. It is a critical component in developing any sustainable use strategy for indigenous lands.

Mr. TORRICELLI. Mr. Megaron's testimony is it has stopped the mining and timber work on the lands on his site. Is that your own experience?

Mr. SCHWARTZMAN. I have firsthand experience of the area which Megaron was speaking of, the Shingu park. His point is that is an area that has been demarcated and there are minimal resources to allow the Indians to protect the area. In that case, it works very well.

For the U.S. to rely exclusively on this—

Mr. TORRICELLI. I am not suggesting that. I want to be sure we are pursuing something that does work.

Mr. SCHWARTZMAN. Absolutely. In fact, I would like to suggest—submit for the record the list of areas still to be demarcated or whose demarcation process—

Mr. TORRICELLI. Would you enter that for the record?

Mr. Tullberg, do you agree with that assessment?

Mr. TULLBERG. Yes. I agree with Mr. Schwartzman. I would add if Brazil were a military dictatorship, one could easily conclude that demarcation is a facade that—that is misleading the rest of the world community. As I tried to stress in my testimony, there

is a strong democratic process in Brazil. It is struggling, under siege; but people who want to do right under Brazilian law, demarcation is that critical step. It is the legal baseline upon which other actions are taken and by which the government then is measured in its behavior and performance.

If we do not have that, if we do not support that, we are effectively—I think as Megaron said—conceding and abandoning the issue.

Mr. TORRICELLI. I addressed with Mr. Pizzatto before the question of the clearing of lands and the legal underpinning. When President Collor was here, he was describing to us that part of the problem was to get a homestead on lands, you needed to clear part of the land, keep it clear; so the law itself was generating the structure.

Has any of that changed?

Mr. SCHWARTZMAN. There have been reductions or restrictions, particularly on the use or application of fiscal incentives and subsidies for cattle ranching in the Amazon, although some of the programs have not been entirely extinguished. Timber still receives subsidies.

The World Bank in two separate natural resource projects.

Mr. TORRICELLI. What Collor was citing in particular was to get title to land, you had to clear it. Does that exist in Brazilian law?

Mr. SCHWARTZMAN. As a statute, in those words, no. But as a critical interpretation, yes. That is still a major problem, the fact—any improvement in land which makes it—makes it classified as productive is land that is considered to be improved if it is deforested.

Mr. TORRICELLI. The Kostmayer legislation you cited, which sounds to have merit—not surprisingly if it is from Mr. Kostmayer—was to label products that are derived from Amazon woods so the consumer knows they are from the lands of indigenous people involved in woods from endangered areas? Is that your suggestion?

Mr. SCHWARTZMAN. The suggestion is—what is in the Kostmayer legislation is a minimal baseline proposal for identifying tropical woods and tropical wood products imported to this country as to the country of origin and species.

Mr. TORRICELLI. Presumably, all places mahogany would come from are not necessarily endangered or of concern. There may be different levels of concern. Wouldn't it make sense to designate those areas in the world with which we are most concerned either because they are rain forest or because they involve the home of indigenous people and then require any woods derived from those lands to be labeled so consumers knew it?

Mr. SCHWARTZMAN. That would make sense. It seems to me a minimal first step to start with country of origin and species if one—if you are going to be able to create incentives for the use of sustainable products. We are not only talking about barring unsustainable products but creating incentives.

Mr. TORRICELLI. The legislation includes any tropical hardwood products regardless of origin.

Do you have any other—either of you from your experience, legislative suggestions of this type that would be helpful? This is obviously a very good one and one we will pursue.

Mr. SCHWARTZMAN. I do think that continued monitoring and attention to the World Bank, Inter-American Development Bank—

Mr. TORRICELLI. That was my next question. Are there any World Bank or Inter-American Development Bank projects now before either institution of which this committee should be aware that we should be addressing that concern the Amazon?

Mr. SCHWARTZMAN. Yes. A number.

Mr. TORRICELLI. Do you have them available? Could you submit them to us?

[The information was not submitted].

Mr. SCHWARTZMAN. Yes, I would be glad to.

One positive program I would like to mention was the G-7 pilot program.

Mr. TORRICELLI. I was going to get to that next. On this subject, are there any development—Mr. Tullberg, you as well, Mr. Pizzatto, if you know them, Megeron, are there any World Bank, Inter-American Bank proposals now in either institution this committee should be aware of so we can help direct the proper American participation, U.S. participation on the question?

Mr. SCHWARTZMAN. The World Bank's projects in Mato Grosso have good goals, can do much good, but will need very strong political will on the part of the bank to see the conditions of the loan and existing environmental indigenous rights legislation in the area where these are carried out will be respected.

Mr. TORRICELLI. There are none you consider to be potentially dangerous?

Mr. SCHWARTZMAN. There is what is very likely to be a project soon, the so-called "Intero Via," the waterway which would affect 20,000 Indians in Mato Grosso.

Mr. TORRICELLI. Which is a concern?

Mr. SCHWARTZMAN. Potentially a very serious concern.

Mr. TORRICELLI. Would you correspond with us and give us the details?

[The information was not submitted].

Mr. TORRICELLI. On the G-7 pilot program, anyone's views on whether it has had a positive practical impact or not and what it teaches us?

Mr. SCHWARTZMAN. The project has been delayed for bureaucratic reasons, but it is potentially a model in some ways in that it is not—as opposed to older World Bank projects, it is not a Band Aid project tied to big infrastructure development and a little bit of environmental clean-up at the end.

It is a freestanding concessional project that seeks to support demarcation of indigenous lands and a series of conservation measures as well. It is certainly worth considering increasing U.S. contributions, particularly making a contribution that is needed to the indigenous lands component.

Mr. TORRICELLI. What is holding up going forward with the pilot program at the moment?

Mr. SCHWARTZMAN. As I understand it, there are bureaucratic obstacles within the Brazilian Government, a question of bureaucratic inefficiency, a failure to arrive at adequate——

Mr. TORRICELLI. For Mr. Pizzatto to succeed in this legislative body with this, what would be required is within the Brazilian population, the politics of a democratic function and the population begins to demand greater protection for the indigenous peoples in the Amazon region.

Are your counterparts in Brazil starting to meet with success in the politics of the country?

Mr. SCHWARTZMAN. Certainly, the indigenous peoples language in the 1988 constitution are a demonstration of that.

Mr. TORRICELLI. Mr. Pizzatto was elected, so clearly some people are sensitive to these issues.

Is it your own belief this is a rising tide in Brazil?

Mr. SCHWARTZMAN. I believe that it is to some extent a rising tide. These issues often have more support in the south in the country, the industrialized more developed regions than in the areas that are most—where indigenous populations are most at risk in the Amazon and the interior.

Mr. TORRICELLI. Mr. Pizzatto, there are some people who have suggested from time to time that in regard to areas that are particularly environmentally or culturally sensitive, no one nation should have to bear the costs of not developing those lands. That is an argument of the State of Florida that would be popular with the Everglades and would be to a greater extent popular in your country.

I know loggers in the Northwest think they should be compensated for not cutting down their trees. But it raises issues of sovereignty. If indeed the international community were to designate five or six very sensitive areas around the world and then buy development rights much like a national park, Brazil doesn't lose sovereignty over the land. It is Brazil.

Rather than take \$200 billion of resources out of use, those land rights are purchased in a variety of places around the world. Is that politically obtainable, if not today, in coming years as a concept in Brazil?

Mr. PIZZATTO. It is an unacceptable situation under the current concept of national sovereignty in my country. We only can discuss these issues under a complex system of economic and social relations.

A clear example is during the paratary meetings of the UNCED last year, there were discussions on permits for pollution through the stock exchanges around the world. And this discussion did not reach any result at this point.

This issue becomes even more complex if we start dealing with biotechnology resources of the Amazon and the result of selling these results.

Mr. TORRICELLI. I know the complexity of that issue. I was leaving it alone. I was focusing instead on the degree of sovereignty sensitivity, whether it allows for a multinational answer to bearing the financial burden if not developed?

Mr. PIZZATTO. I would like to confirm my previous statement that, in terms of sovereignty, that this is an unacceptable position for my country.

Mr. TORRICELLI. That confirms everything I heard.

Mr. PIZZATTO. We can discuss economic positions but not sovereignty.

Mr. TORRICELLI. I understand. Megaron.

Mr. MEGARON. Just 1 month before I came here, the Nucleus for Indigenous Rights showed me a petition signed by the members of the Parastate legislature to diminish all the indigenous areas of Brazil. This is an example of political tendencies in Brazil.

Politicians opposed to indigenous interests are organizing and acting so as to diminish our areas.

So the interests being shown by members of governments, Congressmen, of other countries in our interests and our affairs are very opportune for us at this moment.

Mr. TORRICELLI. This is an opportune moment for me to offer some concluding words then because it is our intention to be involved.

We want to be sensitive to the questions of sovereignty of Brazil, a nation with whom we have good relations and the highest regard. I think we have all come to understand the international implications of this issue and the legitimate concern for all of humanity.

I would like to have this hearing be an opening of a dialogue, Mr. Pizzatto, with you in the hope when you see ways we can be helpful, that you are telling us and that we continue to work together. I make the same offer, Mr. Megaron, to you. When there are things we should know, this is a continuing dialogue.

Mr. Schwartzman, Mr. Tullberg, in the legislative field, monitoring the World Bank, Inter-American Development Bank, when those institutions are doing things that are damaging, I trust you will be our eyes and ears to let us know. When there are things they are doing to be helpful, you can bring that to our attention as well.

Any series of ideas, no matter how large or small as evidenced by the suggestion made to us today which we will begin to ensure becomes law, we trust you will bring it forward with us today.

I want this question of the international rights of indigenous people and questions of development of precious lands to be a part of the work of this committee. You have all been a great help to us today. I know you have come great distances, and at considerable burden to yourselves. We are very grateful and hope, as I suggested, this is the beginning of a long relationship for common purpose.

Thank you for being with us today.

The committee is adjourned.

[Whereupon, at 4:05 p.m., the subcommittee was adjourned.]

APPENDIX

OPENING STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, RANKING MEMBER SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS BRAZIL'S INDIGENOUS PEOPLES

July 14, 1993

Mr. Chairman, I join you in welcoming our notable panel of expert witnesses for our hearing today. This is an appropriate followup to the meeting we had in the Spring when the United Nations Goodwill Ambassador for the Year of the Indigenous People, Rigoberta Menchu, was in town.

Using Brazil as a case study will be helpful in addressing the broader, international issues affecting indigenous peoples, and U.S. policy with respect to foreign assistance to such regions and in support of indigenous peoples' rights. The 1988 Constitution of Brazil explicitly expresses Brazil's commitment to ensure that lands traditionally occupied by the indigenous population are intended for their permanent possession and that they have exclusive rights to use and benefit from the riches of the soil, and water resources. As with any Constitutional commitment, it is meaningless without the political will to enforce the provisions.

I have reserved judgement about the progress on implementation of these objectives which we can expect with the new administration in Brazil. I will be interested to hear the testimony of our panel today regarding that matter. Understandably, there is anxiety about the Brazilian government's ability to fulfill its obligation to demarcate all remaining Indian lands by October of this year.

The violations of the human and civil rights of indigenous peoples range from violence and discrimination, to the lack of commitment on behalf of political leaders to fulfill promises and legal obligations which are designed to protect the indigenous population. Hand in hand with these concerns, national and international policy has the challenge of balancing the pressures of economic development and the needs and rights of indigenous peoples.

As human and civil rights for the indigenous peoples are protected, I believe the long-term effects on the environment will be more positive. Certainly protection for the livelihoods of indigenous peoples will require a balanced combination of measures which are culturally and ecologically sensitive, coordination with organizations comprised of indigenous people, continued international encouragement and prodding -- when necessary -- through multilateral organizations, and circumspect bilateral and multilateral trade policy.

We have an exemplary panel of witnesses today whose expertise and personal experiences will be invaluable to our study of the issues facing U.S. policy and the needs of indigenous populations throughout our hemisphere. Thank you for lending your expertise and taking the time to testify.

Luciano Pizzatto
 (Brazilian Federal Representative)
 Testimony Before the Subcommittee on Foreign Affairs
 U.S. House of Representatives
 Washington, D.C.
 July 14, 1993

This statement represents my personal assessment of the condition of the Brazilian indian communities and on some aspects of our environment.

As a Forest Engineer and now as a politician, I have been confronted with the various aspects of the main problem of indian communities - the respect those communities and their traditions deserve vis-a-vis the unavoidable integration to other societies and their habits.

Disregarding any ideological component in the setting up of programs, institutional policies and even specific indian legislation, I think that, in Brazil, the greatest challenge to be addressed will be how to maintain respect for the INDIAN WILL and how to apply this WILL to the relationship with a modern, dynamic community that each day permeates all areas of indian life independently of our intentions or interests.

This INDIAN WILL, that differs from one community to another and may even change in the same community, is now supporting the new indian leadership, which is making use of their traditional interlocutors, particularly certain NGO's, to try to negotiate with the government authorities and other interested parties (even foreign countries) in a direct, transparent and objective way, so that traditional spokesmen are reduced to a supporting role.

Due to this situation we have to address such new challenges as:

a) If we want the indian communities to have freedom to maintain and exploit their preserves, we should guarantee that the financial results will be managed by those communities directly. This will be possible in some cases but impractical in others.

b) The possibility of the end of the State's patronage of the indians can not happen without the guarantee of minimal conditions of maintenance of the traditions and culture of each tribe, but at the same time should support an advance to a more equal relationship between the indians and other communities.

In these two examples, one can feel the complexities of the Indian situation in Brazil, at the moment when the Congress is debating a new Indian Statute, which may be approved this fall and thereafter will govern all legal aspects of indian life.

The new Statute should be an instrument of progress, should represent the result of a minimal consensus of the interests involved and take into consideration the three proposals already in discussion in the Congress.

Concerning the situation of the traditional indian lands, the period established in the 1988 Constitution, for the regularization of indian land ownership throughout the country will end. This indian land totals 87 million hectares (217,5 million acres, or more than twice the area of the State of California) in 504 indian territories belonging to about 250 thousand individuals from 200 hundred tribes. The regularization is being delayed by difficult institutional conditions, lack of financial resources and difficulties in solving regional conflicts.

Moreover the indian preserves, especially in the north of the country, include areas with enormous natural resources, such as forests, minerals and biogenetic resources, and the pressures to exploit them are natural and often irresistible.

Taking into consideration all of these factors, my opinion on the main questions of interest for this commission is this:

1. There has been an improvement in the awareness of the government and public opinion concerning the importance of the question of indigenous peoples, but there still exists a wide range of conflicting opinions over the dimensions of indian claims to preserve areas, that should be addressed by a major clarification effort, easing of tensions and finding of alternatives in order to avoid stimulating conflicts and to promote full awareness among the whole Brazilian people and interested foreign nations.
2. FUNAI (National Indian Foundation) and other involved ministries, particularly the Ministries of Health and Education, do not have financial and human resources to fulfill adequately with their missions.
3. The self-sufficiency of many indian communities through the administration of their natural resources would be possible if we could establish clearly how, in legal and institutional terms, this administration would be regulated.
4. The mining and illegal timber exploration are still the major problems that have led to the destruction of indian preserves in the country. In the first case, mining is done by gold prospectors, thousands of them, who are not working only by hand but are effectively small enterprises, which are mechanized, own small planes and have great environmental impact. In the second case, dishonest timber merchants utilize the indian preserves for raw material sources without any reforestation and forest management.

5. The Government has showed political will and has taken steps to restrain the mining and illegal timber exploitation but the dimension of the problem is much greater than the capacity to control it.

6. The level of the problems raised in the indian communities by indiscriminate contact with other people, especially the clandestine gold prospectors is increasing, with serious health problems, prostitution, destruction of tradition and culture and conflicts over land ownership.

7. It is necessary to recognize the cultural, environmental and historical diversity of Brazil's indigenous groups, so that all indian communities, not just those of the Amazon, receive support from assistance agencies.

8. In environmental terms, Brazil has made progress, reducing the areas of deforestation and the intensity of forest burning (approximately 1 million ha/year = 2,5 million acres/year according to INPE/NASA-1993), implementing some pilot programs of forest management and even wildlife protection, beginning the demarcation of extraction preserves and discussing these problems with society. It seems that in these cases there is more political interest than in the indian question itself.

9. As for deforestation incentives as well as taxes on forest land the government is already acting to restrict and reduce these incentives but without ending them completely. The future presentation and approval of Amazon zoning will allow better application of regional criteria. In relation to the taxation of natural forests as unproductive land, this distortion continues to exist and in some municipalities it is still even considered that only deforestation proves that land is used. This is a point that deserves closer attention.

10. Concerning the revision of the Federal Constitution which will begin in October, 1993, there is concern about the maintenance of the current text and its benefits for the indians, but it seems that the tendency of most congressmen is to keep or even to extend the advances already made, as long as there is effective pressure from society, the NGO's and indian communities.

Even considering this observation, which I regard as more positive than the situation a few years ago, we still urgently need ways to bridge the huge gap between the need to balance ecological, economical and social functions and the reality of poverty and hunger.

Prepared Statement of Megaron Txucarramae,

Brazilian Indigenous Leader,

before the

Subcommittee on Western Hemisphere Affairs

Committee on Foreign Affairs

U.S. House of Representatives

Washington D.C.

July 14, 1993

I must say although the rights of the indigenous peoples of Brazil are legally recognized, those rights continue being disrespected. This is because our rights conflict with the interests of powerful groups who want to illegally exploit our lands and natural resources. Therefore, the indigenous question is almost always invisible, becoming known to society only when violent clashes occur or there is organized pressure.

Thus, our problems are not a priority for the government. All concrete measures are delayed, and every solution is hard won. The Government is, almost always, absent or late, and does not enforce the laws relating to indigenous rights. It simply lets time pass, it seems to me, counting on the disappearance of our peoples, or betting that we will be forgiven.

I want to say that I understand that our rights of citizenship include the recognition of our difference in the first place, and, as a consequence, the right to special support from the State in all matters in which we become involved with non-Indians.

The constant delay of judicial proceedings concerning violent attacks against indigenous persons and communities amounts to judicial impunity for such acts, with the complicity of public institutions.

I would like to cite two flagrant examples:

The massacre of 14 Ticunas Indians -- men, women and children -- killed in a ambush by loggers in October of 1988. The 17 persons accused of committing the crime have until today never been judged and continue in liberty.

The case of the Guarani leader Marcal de Souza, who was assassinated in 1983 at the instigation of a rancher who had invaded the lands of that people. Despite all the evidence, the rancher was recently tried and found not guilty. The prosecution is seeking a new trial.

The Brazilian constitution of 1988 granted indigenous peoples the right to their traditional lands and stipulated a period of 5 years -- which is about to end this October -- for the Government to demarcate all of our areas. The indigenous peoples of Brazil live in more or less 520 different areas. Of these, the government has demarcated around 280. However, there are still at least 170 areas for which the political decision of the government is pending -- which is to say that those areas are still not recognized. Among these areas, there are some such as the Indigenous Areas of Alto Rio Negro in Amazonas and Raposa Serra do Sol in Roraima that have not been demarcated by the government because of intense pressure on the part of local economic interests. Besides these there are some 70 other areas whose boundries have already been established by the Ministry of Justice but have not been physically demarcated due to lack of financial resources.

As can be seen, the government will not fulfill its constitutional obligation.

If this were not enough, practically all the indigenous areas in the country -- demarcated or not -- are being invaded by ranchers, goldminers, and loggers, and the government has taken no action to definitively remove them.

We have been victims of predatory processes of mining and logging of tropical hardwoods in our areas.

When the impetus for these invasions has not come from the government, they occur as a result of governmental inaction and complacency. I think that the goldminers and loggers have simply copied the Government, which has always in these cases, made use of corruption, coercion, and blackmail.

A prefect example is the case of my relatives, the Kayapo of Gorotire: in 1981 they took action and expelled the gold miners who were trying to establish themselves in their undemarcated territory. The Government then bargained with my kinsmen in the following manner: You let the miners work and we will demarcate your land. Of course everyone agreed. The Gorotire had for a long time wanted their land demarcated and had continually struggled for this.

The result of this is that, today, 100% of the Gorotire are highly contaminated by methyl-mercury, according to the results of a scientific investigation doen by the Fundacao Mata Virgem. The Fresco river, the village water source, is without life, silted and polluted.

This calamitous situation is repeated in various other indigenous areas. The Government, in spite of knowing this, has until now doen nothing to correct its error, carrying out its constitutional duty to defend the indigenous territories and patrimony, and does not seem disposed to do so.

Aside from the environmental and moral losses, there remains our concern with the future of the indigenous peoples victimized by this assault, recently aggravated by the inclusion of our "in situ" gene banks, developed and conserved over millenia at no cost to occidental civilization.

These resources are being appropriated by your scientists and businessmen, with no return or respect for our long term labor of selection and maintainence of these genetic resources. To the contrary, the traditional peoples of the world are likely to pay dearly for the products created through quick manipulation of their ancient genetic resources.

In their avarice for quick and easy profits, supported by the avidity and lack of awareness of the consumers of the so-called 1st world, regional economic interests are sacrificing equally precious plants and animals that, I am sure, could serve us all, and not only the rich.

Help us. Help yourselves. There is still time.

Present Situation of Indigenous Lands

| | |
|-----------------------------------------|-----|
| Without recognition | 106 |
| Identified, sent to Ministry of Justice | 18 |
| Identified | 43 |
| Delimited | 68 |
| Demarcated | 33 |
| Demarcated, validated by President | 164 |
| Registered | 87 |
| Total | 519 |

Prepared Statement of Stephan Schwartzman, Senior Scientist,

Environmental Defense Fund

before the

Subcommittee on Western Hemisphere Affairs

Committee on Foreign Affairs

U.S. House of Representatives

Washington D.C.

July 14, 1993

**Indigenous Peoples of Brazil:
Human Rights and the Environment**

Mr. Chairman, I am Stephan Schwartzman, anthropologist of the International Program of the Environmental Defense Fund. I am testifying today on behalf of EDF and the National Wildlife Federation. The Environmental Defense Fund is a national non-profit organization with over 200,000 members that links science, law and economics to seek solutions to environmental problems. The National Wildlife Federation is the largest conservation and education organization in the nation, with 5,000,000 members. The EDF and NWF International Programs have since 1985 monitored the policies and programs of the international financial institutions to promote environmental and social reforms in them. Brazil, as one of the largest borrowers from the World Bank has been a key case, and the effects of World Bank projects on indigenous populations has been one of the key points at issue in the discussion between the Bank and the environmental community. My understanding of indigenous peoples concerns is based in my experience as an anthropologist. I lived for a year and a half with the Panará Indians (also known as Krenakore) of Mato Grosso state between 1980 and 1983, while conducting PhD thesis research, and have continued working with indigenous groups, rubber tappers, Amazon peasants, and nongovernmental organizations since then.

The situation of Brazil's indigenous peoples is of critical concern internationally not only because of the human rights issues at stake, and

not only because of the importance to global environment of indigenous lands. The problems facing Brazil's Indians demonstrate the connections between human rights and environmental protection, with implications far beyond Brazil or the Amazon. The indigenous peoples of Brazil, who today see their lands invaded by desperate gold miners or colonists, or plundered by loggers and ranchers, who suffer devastating epidemics of white peoples diseases, and who still risk assassinations that go ignored or unpunished by the courts, are paying the costs of a model of development that has benefitted a tiny elite at the expense of the poor and politically powerless, and has caused enormous environmental destruction. The legal recognition, or demarcation, of indigenous lands, as well as their effective protection and development of strategies for the environmental and economic sustainability of those lands, are critical steps towards creating a sustainable, and socially just model of development.

In this statement, I want to review the legal status of Indian lands in Brazil, and to highlight several crisis situations to which we in the US have connections, either through World Bank projects, or as major consumers of tropical timber, particularly mahogany. I will then outline several steps that this subcommittee can take to constructively contribute to solutions to these crises.

The Legal Status of Indigenous Lands in Brazil

There are 200 indigenous peoples in Brazil, that number approximately 250,000 people (0.2% of the national population), that speak 170 distinct languages. The Brazilian Constitution recognizes Indian land rights to 80 million hectares (197 million acres), or about 10% of the national territory. (Ricardo, Carlos A., "Quem fala em nome dos indios?". Povos Indigenas no Brasil 1987-1990, Aconteceu Especial 18. CEDI, 1991) Over 90% of the recognized Indian land in Brazil is in the Amazon, and Indian lands represent about 18% of the Amazon. There is evidence of the existence of some 53 isolated Indian groups, that is, groups with no regular contact with the national society, although FUNAI has confirmed the existence of only 12 of these.

Article 231 of the Constitution of the Federal Republic of Brazil of 1988 recognizes Indian rights to the lands they traditionally occupy, and assigns to the Federal government the responsibility for demarcating and protecting those lands and the wealth in them. Indigenous lands are the property of the federal government, but the Indians have permanent

possession and usufruct of the lands. The demarcation process is the legal and physical means whereby the government gives administrative recognition to the Indians' pre-existing land rights. The demarcation process as presently constituted includes the following steps:

Identification - The National Indian Foundation (FUNAI) (Brazil's Indian agency) recognizes a given area as occupied by Indians and conducts anthropological studies of the area; FUNAI approves the identification studies and publishes a description of the area in the Federal Register, and sends the studies to the Ministry of Justice;

Delimitation - The Minister of Justice reviews the studies, publishes a document declaring the area to be occupied by Indians, and authorizes the demarcation;

Demarcation - The area is physically demarcated (including signs at regular intervals declaring the area as indigenous land, and clearing of pathways on borders not defined by natural features such as rivers);

Validation of Demarcation (homologação) - The demarcation is validated as correct by the President;

Registry - The area is registered in the appropriate regional land office and the Department of the National Patrimony.

The process of demarcation, as referenced in the Constitution 1988, includes all of the above steps. The Constitution also stipulates that all remaining Indian lands be demarcated within 5 years, that is, by October of 1993.

There are 519 known indigenous areas in Brazil (not including the lands of isolated indigenous groups). Of these, 251 are either fully demarcated, or have received presidential validation of the physical demarcation. The broadly representative, and technically well informed Forum in Defense of Indigenous Rights, representing over 40 indigenous human rights, and environmental organizations calculates that 106 known areas have not even been identified, another 61 areas have been identified, 68 have been delimited but not physically demarcated and 33 have been delimited, and physically demarcated but have not had Presidential validation of the demarcation. That is, 268 are in varying stages of demarcation prior to the legally critical step of Presidential validation of the

physical demarcation. Of these, more than 100 do not even have the documentation necessary to begin the demarcation process (those not identified). Obviously, the constitutional requirement for demarcation of all remaining Indian lands by October of 1993 will not be met.

This is of particular concern, since the process of Constitutional revision also starts this year, and efforts to reduce the extent of existing indigenous areas, and other attempts to undermine indigenous rights, are already underway. The previous administration in Brazil took critically important steps in demarcating the 9 million hectare Yanomami area, home to the and the Mekragnoti area of the Kayapo, but subsequently sectors of the military, mining interests and regional political elites have mobilized for reducing the extent of indigenous lands, and undermining indigenous rights in the constitutional revision process.

US Links to the Indigenous Peoples of Brazil

The US is connected to indigenous peoples in Brazil in two major ways. Many indigenous areas have been affected by multilaterally financed development projects, particularly World Bank projects. Since the US is the largest shareholder in the World Bank, and US tax dollars, along with the contributions of the other major donor nations, allow the institution to exist and operate, the effects of Bank projects on indigenous peoples, and the extent to which the Bank implements its own policy on indigenous peoples and economic development, is a legitimate concern of the US Congress. Indeed, members of the Congress have raised concerns with the effects of various World Bank projects to good effect, and Congressional oversight has been critically important in promoting reforms in the multilateral lending institutions. In addition, the US is a major importer of tropical hardwoods, and the second largest consumer of Brazilian mahogany. Predatory logging, especially for mahogany, is wreaking havoc on Indian lands in the Amazon, and the US can do a great deal to help create incentives for far more sustainable uses of tropical forest--and the natural resource base of many indigenous areas--than presently exist.

Indigenous Areas in World Bank Projects

In the early 1980s, the World Bank financed two major infrastructure and agricultural colonization projects in the Brazilian Amazon--the Polonoreste project, in Rondonia and Mato Grosso states, and the Carajas Iron Ore project, in Para and Maranhão states. Polonoreste, in which the Bank

invested \$434 million of an estimated \$1.6 billion total project cost, financed the paving of 1,500 kilometers of the BR-364 road, as well as feeder roads, agricultural colonization, and environmental protection actions. There are about 10,000 Indians in some 67 areas in the project area, some of whom were to be assisted by an "Amerindian Special Project". The Carajas Iron Ore Project, a massive iron mine, an 890 kilometer railroad for ore transport and deep water port, cost over \$3 billion, of which the World Bank loaned \$304 million, but orchestrated much more private and bilateral financing. The Amerindian Special Project for Carajas intended to assist some 15,000 Indians in 24 areas in Pará, Tocantins, and Maranhão.

For large part of the indigenous peoples affected by these projects, the effects of uncontrolled predatory development have been far greater than any mitigation provided through the special projects. The statement submitted to this subcommittee by Dr. Terence Turner on behalf of the Commission for Human Rights of the American Anthropological Association, illustrates a tragic and disgraceful case in point, in the Alto Turiacu and Caru indigenous areas, and the undemarcated Awa-Guaja lands in northern Maranhão. These areas fall within the Carajas Amerindian Project. While the Bank can point to progress in demarcation of various areas, the uncontrolled migration, deforestation, spread of epidemic diseases, land conflicts, and invasion of Indian lands and pillage of their natural resources following in the wake of the infrastructure development boom, far outweigh the marginal benefits of measures actually executed on behalf of the indigenous communities. While the Alto Turiacu and Caru areas are demarcated, both have been massively invaded by landless peasants, ranchers and illegal loggers. A fraudulent land-titling company operated by members of the regional elite has sold false titles to large part of one of the reserves, and ranchers invading the reserve maintain a private army to protect their claims by force. Six Indians are reported to have been killed in the last three years. The Awa-Guaja, one the last nomadic hunting and gathering groups in the Amazon, include uncontacted groups, and there are reports of massacres against them. The Awa-Guaja area has not yet been demarcated, although funds are available and the group is utterly vulnerable to introduced diseases and outside influences. The prospects are for pressure to increase in these areas, in part owing to the spread of charcoal production from the native forest for pig-iron production--made possible by the Bank's project. Local authorities, including police and the courts have been completely ineffective, and may in some instances be complicit with the pillage of Indian lands.

Recent reports from Indian areas in Rondonia and Mato Grosso, in the Polonoroeste project area, suggest a similar situation. In the Aripuanã Indigenous Park, inhabited by the Cinta Larga, as well as in the Surui and Zoro areas, illegal logging and mining, is rapidly exhausting the natural resource patrimony of the areas as well as destructuring the traditional social organizations of the groups. In Rondonia, a mahogany boom entirely consumed the reserves of the timber in the state outside of Indian areas by the mid-1980s. Dozens of loggers then began to systematically assail the Indian areas, frequently with the collaboration of FUNAI officials. The director of the Aripuanã Park at the time introduced a completely illegal gold mining operation (garimpo) into the reserve. Most of the indigenous reserves with mahogany on them in 1987 were subject to logging contracts signed by then-president of FUNAI, Romero Juca, which were subsequently annulled in federal court. ("O ouro verde das terras dos indios" CEDI, Novembro 1992) Many of these contracts gave loggers massive concessions in exchange for services FUNAI was in any case obligated to provide, such as health posts and schools, and underestimated the value of the timber, while overestimating the cost of the services provided. Some groups initially resisted invasions of loggers and small farmers, such as the Zoro, but in the absence of basic services--particularly health care, in a context of rampaging malaria and other epidemic diseases introduced by uncontrolled development--have ceded to the constant pressure of the loggers, and are now signing logging contracts themselves. The most recent report from the Zoro area calculated that in the dry season, when logging activity is at its peak, some 30 heavy trucks a day of mahogany were leaving the area. The Indians, typically illiterate and in any case without effective means to control the quantities of timber extracted, are perforce selling their inheritance for a pittance. Internal divisions in the groups have been exacerbated, and traditional leaders that resisted deals with the loggers have been demoralized.

Even in the absence of minimally adequate services and under enormous pressure, some groups continue to resist, as is the case of some Nambiquara groups in Mato Grosso. In the Sarare and Vale do Guapore Indigenous Areas, local indigenous rights groups report that an armed conflict among Nambiquara sub-groups is imminent. The Wassusu, Sarare, Hahantessu, Negarote and Mamainde have refused to deal with loggers who have pressured them and stolen timber from their lands for years. Failing in repeated efforts to mobilize police action to prevent the invasion of their lands and theft of their timber, the Nambiquara have seized and burned logging trucks and engaged in armed confrontations. Two loggers

and two miners have been killed in the Guapore area in the last year, and anti-Indian sentiment is strong in the regional towns. The loggers have enlisted other Nambiquara groups, particularly the Nambiquara do Campo, who have no mahogany on their land, to pressure the former groups and serve as armed guards on incursions to steal timber. Although two court orders for the imprisonment of illegal loggers were issued last year, the police have yet to execute them. A FUNAI agent with some 15 years of experience among the Nambiquara, who has worked tirelessly to move the agency and local authorities to enforce the law, Marcelo dos Santos, was forced last year to leave the state after years of increasingly menacing death threats. In addition, the Sarare Indigenous Area suffered an invasion by 3,000 gold miners (*garimpeiros*) in 1991. The World Bank, when informed of a federal court decision ordering FUNAI and the Environmental Institute (IBAMA) to remove the miners, required the government of Mato Grosso to carry out the removal and design a plan for the environmental rehabilitation of the area degraded, as a condition for the approval of a new loan for the state. The loan was approved after the due removal of the miners, but now another 1,000 armed miners have reinvaded the area. The potential for large scale violence--with disastrous results for the Indians--in this situation is enormous.

One of the environmental protection actions of the Polonoroeste project in Rondonia was the creation of the Guapore Biological Reserve. The reserve is inhabited by two uncontacted indigenous groups. Since the late 1980s, the area has been subject to illegal logging for mahogany, with cover from local politicians, as well as irregular sale of lots in the reserve. The uncontacted groups are at extremely high risk from introduced diseases, and unless rapid measures are taken to secure their lands and provide medical services, face massive population loss or even extermination.

In both the Polonoroeste and Carajas projects, the Bank was willing to accept assurances that measures to protect Indian lands and indigenous populations would be taken in the course of the project, and financed infrastructure development before the government demonstrated the political will, and wherewithal, to carry out those measures. The World Bank's own internal evaluation of the Carajas project states, with reference to the Amerindian special project, "What is required, more specifically, is the effective guarantee of Amerindian rights--as defined under both the 1973 Indian Statute and . . . the 1988 Brazilian federal constitution--to the exclusive use of the natural resources on the lands they inhabit."

The Rondonia and Mato Grosso Resource Management Projects, involving Bank financing of \$167 million and \$205 million respectively, while not principally aimed at infrastructure development, may similarly fail to adequately protect indigenous groups from invasion and the sack of their natural resources. Both projects, conceived in the aftermath of the notorious Polonoroeste Project and approved at the end of 1992, support land use zoning plans to be carried out by the respective state governments, and include services in indigenous areas. But both were also approved in the absence of substantial demonstration of the requisite political will to make these plans effective. The disastrous circumstances in Indian areas in Rondonia and Mato Grosso outlined above were in full course while the new loans were being prepared and appraised, but with the exception of the mining invasion of the Sarare area, the Bank required little if any action on the part of local authorities to enforce existing legislation. The Bank's insistence on removal of the miners from Sarare was no doubt conditioned by the lawsuit filed by the nongovernmental Nucleus for Indigenous Rights, which obtained a federal court decision ordering FUNAI and IBAMA to remove the miners.

A broadly representative forum of nongovernmental organizations in Rondonia has repeatedly criticized the Rondonia project, in letters to the Bank as well as in a public hearing in the Environment Committee of the Brazilian House of Representatives, arguing that government agencies are already violating the zoning plan, even as the project starts, and that critical policy changes negotiated as conditions of loan approval are being ignored by key organs of government. A similar NGOs forum in Mato Grosso has argued that key sectors of the civil society affected by the loan--rural workers unions, church groups, environmental and human rights groups, as well as indigenous organizations--have been excluded from even minimal information on the planning process for the Mato Grosso project. The Mato Grosso forum has voiced serious doubts about the institutional capacity of the state executing agencies to carry out the complex project.

It is possible that the \$255 million G7 Pilot Program for the Conservation of Brazilian Tropical Forest, coordinated by the World Bank, and funded by the G7 nations, may provide a more promising model for international assistance for forest preservation and indigenous peoples. While bureaucratic delays within Brazilian government have held up the project, the indigenous areas component would support identification and demarcation of indigenous areas in the Amazon, health care, and a pilot indigenous resource management plan.

Mahogany and Indigenous Areas

The extraction of mahogany (Sweitenia macrophylla King) is without doubt on the leading edge of the destruction of the Amazon forest and the violation of indigenous rights in Brazil. It is not accidental that the very serious threats to the cultural and physical survival of indigenous groups in World Bank project areas cited above all involve illegal logging, chiefly of mahogany. These cases could easily be multiplied, as for example in the Vale do Javari in Amazonas, where loggers operate in proximity to isolated indigenous groups, putting them at risk of extinction, or in the Kampa area in Acre, where loggers subjected the Kampa to debt peonage in the timber trade. Mahogany is by far the most valuable timber in the Amazon; it is worth orders of magnitude more than other Amazon hardwoods and has a ready export market. The high export value of mahogany and almost complete lack of enforcement of environmental and other legislation with regard to its exploitation makes Amazonian mahogany more like gold or coca than other timber products, as is also suggested by the frequent violence associated with its extraction. Further, while subsidies for cattle ranching have been largely phased out or restricted, timber producers still enjoy tax holidays and subsidies for their operations in the Amazon (Prado and Deusdara Filho, "Sumario Conclusivo: Politicas publicas e uso dos recursos florestais na Amazonia", FUNATURA, 1992. mss.)

Brazilian mahogany production and export have increased very rapidly over the last decade, with extremely serious effects. Between 1985 and 1990 loggers in Pará state alone opened some 3,000 kilometers of irregular and unauthorized roads, including roads in indigenous areas, vastly increasing the potential cattle ranching and colonization frontier, utterly without regard to government control. Efforts at management or replanting are nearly nonexistent, although considerable experience with management exists in Central America. In 1992, the Brazilian Botanical Society listed mahogany as an endangered species, and the fear that the species may become extinct in the next decade at present rates of exploitation is more and more frequently voiced. In frontier areas such as southern Pará and Rondonia, sites of rapid frontier expansion in the 70s and 80s, much if not all of the existing mahogany is in either indigenous reserves or other protected areas. Hence the increasing pressure on these areas since the mid 80s, and the intense social disruption in Indian areas caused by logging invasions. So grave is this situation that 65 Brazilian nongovernmental organizations--indigenous organizations, environmental groups, rural workers unions, human rights, and church groups--have called

for a moratorium on the extraction of mahogany in the Amazon, in order that a rational and sustainable policy can be worked out.

The US is the second largest consumer of Brazilian mahogany, after the UK, and Brazil supplied on the order of 45% of US mahogany imports from 1978 to 1991 (Jimerson, L., "Mahogany in the USA: a study for FUNATURA", 1993). We are a major market for this and other tropical hardwoods from the Brazilian Amazon. In light of the urgent situations surrounding mahogany extraction in Indian areas, as well as its environmental effects, the Congress can and should look closely at ways that the US can help create better incentives for sustainable uses of the forest.

Conclusion

Mr. Chairman, the United States has great opportunity--and indeed responsibility--to positively contribute to finding sustainable solutions in the Amazon. In order for the US to make that contribution, or to play a credible leadership role on any international environmental issue (the pillage of the natural resources of Indian lands in the Amazon is an environmental issue, as well as one of human rights), we must first put our own house in order. The international reception our government received at the Earth Summit in Rio last year suggested that very clearly. The US is now starting to do this, through the President's acceptance of the Biodiversity Convention, his commitment to limit US emissions of greenhouse gases, through the proposal to limit logging in our old growth forests, and thorough the Secretary of the Interior's proposals to economically rationalize the use of public lands in such a way that use becomes more ecologically sustainable. I urge you to work with your colleagues in the Congress to support those initiatives, for they are critical to US credibility as a global environmental leader.

One channel through which the Congress can make a difference in the Amazon is the multilateral banks. It is important to recall that it was very largely the monitoring and oversight of the US Congress of the multilateral banks that effected the environmental reforms in the World Bank and Inter American Development Bank, the adoption of environmental impact assessment procedures in the banks, as well as constructively influencing various major projects. Continuing, indeed expanded monitoring and oversight--focusing on paradigmatic cases--can make a critical contribution to the sustainable and socially equitable development of the Amazon.

It is also urgent that the Congress look more closely at the effects of the mahogany trade on indigenous populations and the Amazon forest. The need to make this market less socially destructive, and more environmentally sustainable, and to halt the blatant pillage of resources guaranteed to the indigenous peoples of the Amazon by law, is clear. It would be an excellent use of the resources of the Congressional Research Service to compile a study of US consumption of mahogany and the effects of mahogany exploitation on indigenous groups, and the environment. In this context, it would be very useful to look at how Amazon mahogany gets to US consumers. The CRS has recently issued first rate reports on foreign assistance and indigenous peoples, and biotechnology, intellectual property rights and indigenous peoples, and can produce a high quality study to inform further action.

One action that would begin to create better incentives for the sustainable use of tropical forest immediately, and help to address the problems outlined above, would be to label tropical timber or tropical timber products by species and country of origin. American consumers can help to create positive incentives for more sustainable, and more equitable use of tropical forest resources, but they cannot do so in the absence of minimal information on the products available. More information than species and country of origin would eventually be necessary for consumers to make informed choices that send the right market signals. But a simple labelling requirement would be an enormous step. It would make the most predatory actors in the Amazon think twice, and begin to create terrific opportunities for entrepreneurs who want to market sustainable wood, and want to see that the Indians and other forest communities get a better deal. In 1991, Mr. Kostmayer introduced H.R. 2854, the Tropical Forest Consumer Information and Protection Act of 1991, which contained among other provisions, a labelling requirement. I strongly urge you to consider, with your colleagues, ways of reviving this useful initiative and putting it into practice.

**Prepared Statement Of Steven M. Tullberg
Indian Law Resource Center
before the
Subcommittee on Western Hemisphere Affairs
Committee on Foreign Affairs
U.S. House of Representatives
Washington, D.C.**

July 14, 1993

Thank you for calling this important hearing on the Indigenous Peoples of Brazil. We hope that this is a step toward broader consideration of indigenous peoples' rights throughout the Americas and elsewhere in the world. It is very appropriate for Congress to examine the issue of indigenous peoples' rights in the context of our country's foreign policy and human rights commitments.

Brazil should not stand alone in the harsh spotlight that such a hearing produces. All countries in this hemisphere -- including our own -- need to reform their Indian laws and policies to guarantee and better protect the fundamental rights of all Indians. The United States and some other countries have made significant progress in moving their Indian affairs policies towards peaceful legal and political processes in which democratic rights and freedoms are respected, but in all countries there are still serious flaws that need urgent correction.

We especially commend this committee for soliciting the direct participation of Brazilians in today's hearings. The participation of indigenous spokespersons is particularly praiseworthy. Although anthropologists, missionaries, environmentalists and lawyers have important information to impart, it is of primary importance that we permit and facilitate direct testimony by indigenous peoples and their representatives. In that spirit, I am submitting with my prepared remarks two statements on indigenous rights by Brazilians. The first is a statement by Davi Kopenawa Yanomami that was presented to a member of our Center's staff on a visit to Yanomami territory in 1990. We delivered that urgent plea for international assistance to the Inter-American Commission on Human Rights as requested. The second statement is entitled Establishing The Rule Of Law For The Indian Peoples Of Brazil, by Ana Valéria N. Araújo Leitão, a lawyer in Brazil's only non-governmental legal office for Indian rights, the Nucleus for Indigenous Rights. Ms. Araújo's statement describes the development of Brazil's hopeful new constitution and laws, and provides case analysis of the fitful steps that the government is taking to enforce indigenous rights.

Brazilians will necessarily be at the front of all efforts to overcome what is typically called Brazil's Indian problem. Viewed from the Indians' perspective, it is actually the Indians' problem with Brazil. The Indian peoples of Brazil are few in number (less than one percent of Brazil's population) with a relatively large and resource-rich land base (some ten percent of the

country). They present no military, economic or political threat to the stability or survival of Brazil. The very opposite is true. The Indian peoples of Brazil face systematic efforts by non-Indians to take Indian lands and resources for the benefit of non-Indians. In plain language, Indian land and resources are being confiscated, and thousands of Indians have been dying from the diseases and violence that the invaders have brought into Indian territory.

There are two arguments commonly put forth by those who would deny Brazilian Indians their rights. One argument is that the United States and other countries have no right to criticize Brazil's Indian policies because of their own past and present mistreatment of Indians and other indigenous peoples in their countries. The simple response, of course, is that two wrongs do not make a right. Moreover, as we struggle to overcome past and present wrongs and shortcomings, we cannot remain silent in the face of serious injustices anywhere in the world. Does our nation's history of slavery and racial injustice disqualify us from attacking the evil of apartheid in South Africa? Clearly it does not. We must uphold human rights and the idea of human progress around the world even as we work to better our own society at home. The universality of human rights was reaffirmed at last month's World Conference on Human Rights in Vienna.

The other argument we have heard is that the Indians of Brazil have too much land, more than they can profitably use, more than they should rightfully have for themselves in a country with millions of poor and marginalized people. This is a pernicious and silly argument. It is a variation on the old and discredited legal doctrines of "terra nullius" and "discovery" that were used by Europeans to justify the seizure of lands in other parts of the world. Those doctrines are premised on the discriminatory notion that Europeans and their descendants are a superior race with superior rights over other races. These legal fictions declared indigenous lands vacant and available for whites -- or, today, vacant enough to take some for non-indigenous interests. Whites and their heirs were deemed to have extraordinary legal entitlement to indigenous peoples' lands. Today these colonial doctrines are almost universally disparaged in the international community of legal scholars and human rights experts. In practical terms, the argument that densely populated and needy people are entitled to confiscate their neighbor's lands and resources is fundamentally an invitation to lawlessness and instability. Is populous El Salvador entitled to Honduras? Is Chicago entitled to the Navajo reservation? Does the United States get Canada, Mexico get the United States, and China get all of North America?

Indian peoples too are guaranteed the right to equal protection under the law and the right to their property under Article 21 of the American Convention. Indian peoples, like all others, are entitled to their lands, their resources, their self-determination and their survival.

Fortunately, those Brazilians who would sweep aside the basic human rights of Indian peoples have not been able to block law reform efforts in their country. Honorable and courageous Brazilians worked shoulder to shoulder with Indian leaders in the 1970's and 1980's to develop a remarkably advanced constitutional framework for indigenous rights. The federal prosecutor's office (Federal Public Ministry), federal judges, the Nucleus for Indigenous Rights and other NGOs have taken great strides in recent years to enforce the law. Progress -- uneven

progress but nevertheless an advance -- was made in demarcating Indian lands and in removing invading miners, loggers and settlers from some Indian lands.

Directly threatening Brazil's progress, adversaries of Indian rights have very recently mounted a serious challenge against that promising legal order:

- On the eve of the Rio UNCED meeting President Fernando Collor demarcated Yanomami territory and removed the invading gold miners who had despoiled the Yanomami environment and killed almost one fifth of the Yanomami people in a few short years. We celebrated that achievement. We had been pressing the Yanomami complaint in the Inter-American Commission on Human Rights since 1978, and this seemed to be the critical breakthrough we were hoping to achieve. Shortly thereafter, to our dismay, the government permitted thousands of the miners to return and to continue their devastation in Yanomami territory.

- Recently, the government forced the resignation of Sydney Possuelo, the first President of FUNAI (the government's Indian office) to champion a principled Indian rights policy. As President of FUNAI, Mr. Possuelo had pushed for demarcation of Indian lands and had supported the "Free Jungle II" program to remove the re-invading miners from Yanomami territory. The government denied him the budgetary and political support necessary to carry out his work. Some 700 gold miners are reportedly still inside Yanomami territory.

- The government has failed to institute a comprehensive health care program to overcome the Yanomami malaria epidemic and the many health problems inflicted on other Indians by invading miners, loggers and settlers. Many Indians are dying from diseases for which there is a cure. Field data is incomplete, but at least 34 Yanomami died of diseases during the first five months of this year. Of 8,000 tested for malaria, 19% proved positive. There are about 50 Yanomami who are receiving treatment at this time in the Indian House in Boa Vista.

- For several years the government of Brazil has ignored a request by the Inter-American Commission on Human Rights for an on-site investigation of the Yanomami case and other human rights situations in Brazil. At the recent OAS meeting in Managua the Commission once again solicited the invitation that is needed to undertake such a visit. There has yet been no response from the government of Brazil. By continuously thumbing its nose at the Inter-American Commission, Brazil is failing to meet its human rights obligations and is setting a precedent that is very damaging to the Inter-American human rights system.

- The new Brazilian Justice Minister has been unwilling to take the steps that are necessary under Brazilian law to carry out demarcations of Indian lands. The President of Brazil, Itamar Franco, has failed to ratify demarcations that have been presented to his office. Speaking more generally, President Itamar Franco has simply not shown the political will to remedy wrongs against Indians. It is his constitutional duty to enforce Indian rights guaranteed by Brazil's constitution and laws and by the international law of human rights.

- Miners, loggers and settlers have been invading Indian lands in many parts of Brazil. The government's executive has failed to take remedial action through its law enforcement agencies. The courts are not able to provide comprehensive remedial action (certainly not in the face of an uncooperative executive) and there are far too few legal advocates for the many Indian cases that could be brought.

- Although many of Brazil's federal judges are doing their best to uphold Indian rights, there are a few federal court rulings that have seemingly begun to accommodate the strong pressures against Indian rights. Federal court rulings have permitted some invading settlers to remain on Indian lands while their asserted title claims are adjudicated, a process that can take years. In some cases the grant of false land titles to those who settle on Indian land is being used to block their immediate removal by law enforcement officials.

- The Constitution of Brazil requires that all Indian lands be demarcated by October of this year. It seems that only about half of this required demarcation will be completed by that time. Demarcation is the critical step necessary to provide legal guarantees for Indian land rights.

- The Constitution of Brazil is subject to revision after October of this year. A strong political coalition is threatening to eliminate or dilute "social rights" (including some important women's rights and labor rights), environmental rights and indigenous rights through wholesale revision of the constitution. If successful, Indian legal rights could be set back two decades. It seems that the constitutional revision can be carried out by majority vote in Brazil's Congress.

In sum, the political will to uphold indigenous legal rights in Brazil is not evident at this time. The crisis in Indian law is part of the larger struggle to establish the rule of law and democratic freedoms and to strengthen democratic institutions for all sectors of Brazilian society. Should Brazil fail to uphold the constitutional and legal rights of Indian peoples, that failure will be a serious setback for the rule of law and human rights in general. That setback for Brazil would send a disturbing signal to other countries in the Americas that are experiencing their own difficulties in establishing the democratic rule of law.

What can the United States do to help restore a more promising future for indigenous rights and human rights in Brazil?

- United States governmental agencies and non-governmental organizations should work cooperatively with Brazilians who are at the forefront of the effort to strengthen the rule of law and uphold democratic freedoms and human rights in Brazil. This cooperative work is not interference in the internal affairs of Brazil, but rather, a continuation of the international support given to democratic elements in Brazil during the struggle to establish democratic constitutional government in the 1980's.

- The United States should provide financial support to non-governmental Brazilian indigenous rights groups, environmental groups, and human rights groups that are working to advance indigenous rights. AID and National Endowment for Democracy funds for the

strengthening of democratic institutions and the rule of law seem particularly appropriate for this effort, as well as funds for environmental protection and sustainable development.

- The government of Brazil has cited the lack of economic resources as a reason for its failure to demarcate Indian lands. The United States should consider contributing to the "G-7 Program" that provides funds for conservation in the Amazon region. Some of these funds are earmarked for demarcation of Indian lands.

- The United States should ensure that policies of inter-governmental bodies (the World Bank, Inter-American Development Bank, Pan American Health Organization and United Nations) uphold indigenous rights. This effort should include facilitating prompt delivery of inter-governmental medical assistance to the Yanomami and other Indians in dire need of assistance.

- Acting through its Ambassador to the OAS and through other diplomatic channels, the United States should urge the government of Brazil to invite the Inter-American Commission on Human Rights to conduct the on-site visit that the Commission has long requested.

- The United States should strengthen its human rights reporting on indigenous rights issues in Brazil and elsewhere. The State Department should allocate more funds and personnel to strengthen its human rights offices in all U.S. embassies. The United States should comprehensively cover the human rights problems of indigenous peoples in the annual United States Country Reports on Human Rights Practices.

- The United States should lead by good example. This means closer scrutiny of United States Indian affairs at home. It also means asserting leadership on indigenous rights at the international level. This year, the UN Year of the World's Indigenous Peoples, the United States will be asked to express its position on the draft Declaration on the Rights of Indigenous Peoples that has been developed over the past decade in the UN Working Group on Indigenous Populations. The United States should give strong support to that Declaration, and should look for other opportunities to strengthen international human rights standards for indigenous peoples.

- Through more congressional hearings on issues pertaining to indigenous rights, the United States Congress can help assure that indigenous peoples are not forgotten in U.S. foreign policy. Congress can help craft better foreign policy for the protection of all indigenous peoples. We respectfully urge this committee to conduct a hearing this fall on the draft Declaration on the Rights of Indigenous Peoples.

Thank you for the opportunity to testify. We would be pleased to answer questions and to supply additional information.

Statement
to
The Inter-American Commission on Human Rights
by
Davi Kopenawa Yanomami
Demini, Brazil
September 17, 1990

My name is Davi Kopenawa Yanomami. I think many people already know me or at least have heard my name. I am a Yanomami Indian. I want to send my message to those who are friends and who are also helping us to defend the forest. I want to talk to the people through the authorities and to any other people who do not know the problems of the Indian in Brazil. We Yanomami Indians have lived in this forest for real long time, for much longer and before any white or non-Indian people arrived here. We used to be free and we did not have any kind of illness or we were not sick at all.

Because during that time there were no non-Indians around here - they were far away - we Indians did not know that the non-Indians would give us so many problems, that the gold miners were so bad. I am telling the truth, and I am not saying that every non-Indian is not good or a bad person. I am talking about the gold miners who come here and take out our fish, the animals of the forest and devastate the forest. That is what I am talking about. Now we have the garimpeiros in here. They have invaded our territory. In 1987, that was when they first came. They also killed four Yanomami at Paapiu. From Paapiu they spread out into the territory with small airplanes and helicopters that they had and rolled into the forest. They are now all over the territory.

And we Yanomami Indians are very much worried - we are very worried, because we do not have an authority like the President. We are not authorities so we have to ask them to change the situation and to take the gold miners or garimpeiros out of the area.

I have asked many times FUNAI and all the authorities, including former President Sarney, when he was president. I asked him to take out the gold miners, the garimpeiros, but the only thing they did was to promise and to keep promising things and not do anything.

Instead, they let many other gold miners come in. They have come through Catrimoni, Uraricuera, Jai, Maturaca and all those other places. And they did not take them out. With the gold miners or garimpeiros came also the sickness. They spread out and they also took the sickness with them. Because of the mosquitos that bite them and bite us we are now having all of this sickness. The sickness called malaria is very strong, and I think at least 1000 Yanomami have died already. Even more than 1000. That is what I think.

Our situation, the Yanomami situation, is very bad. Now our rivers are dirty. Our streams which are the small rivers are dirty. The Yanomami do not know about mercury. They have never seen it. Mercury is used by gold miners to clean the gold. I mean they use it for gold mining. So it goes back to the river

and the fish that the Yanomami eat and the water that the Yanomami drink is mixed with mercury. When they eat that and drink that they get sick.

Those gold miners are also poor people. Just like us they are not rich. I feel pity for them because they come here, because their bosses or garimpos send them here, and they just obey them. Around this Surucucus area there are a lot of gold miners or garimpeiros. The federal police has not taken them out. They tried, but what they did was to get the nice garimpeiros out. Not the bad and mean ones.

I am a Yanomami Indian who understands the non-Indian world. I keep asking President Collor to take out or to expel the gold miners from our territory.

President Collor has been in Surucucus, but he has not been in the other territories of Catrimania, Awaris, Toototobi, Aracaca, Maturica. He has not been there. He has only been in a military base in Surucucus area. That is the only thing he saw. President Collor knows that the situation is not good. So I am asking other people to continue pressuring the Brazilian government to help expel the gold miners.

I asked the UN, the United Nations, that gave me a prize, and I tell them that the prize did not help my people. So I am asking the UN to help the Yanomami people to pressure the Brazilian government to take out the gold miners from our area. Also, the Organization of American States, we want them to help us as friends. Help the Yanomami as though they were our friends.

I think it is not only the Brazilian government. You should pressure every government in the world because they are all alike, and they should help us help the Indian. Protect the Indians, protect the rivers, the mountains, the forests. We need to survive.

It is very important for them too. It is not only the Yanomami but also the non-Indians. We all depend on the land. So if they do not protect the land, all of humanity will die.

To you whom I am sending this message, what I am asking is to do something to help the Brazilian Indians, and also all the Indians of the world, because the Indians want to live in peace. Not only the Indians who live in the forest, but also all of the Indians who live in the city and the non-Indians who are living in the city and suffering because the government should pay attention to all of us and do something to help us.

I am going to say something else that I had forgotten. It is about the 19 islands of Yanomami land that former President Sarney demarcated. We Yanomami Indians do not want to live in

islands. We want to be safe. The gold miners are going to enter our islands and we want to be safe. We need a continuous area and a big area in order to be able to fish and hunt and live well. We want all of our land together.

With regard with the government operation that should take out the gold miners, I know they have not taken out all of the gold miners. The operation has stopped because the government says that they do not have money, and they need money to pay federal police in order to have them working and taking out the gold miners. I know the government authorities, the Brazilian authorities, and I know the politicians and I know the way they work. My feeling is that they actually do not want to take the gold miners out. They do not want to solve our problems. What they really want is to be here and exploit our resources. That is why they do not want to solve our problems.

There are many people who are powerful. There are powerful gold miners especially the chiefs or owners of the garimpeiros, known as garimpos, and some authorities too, like Romero Juca, former president of FUNAI. He is responsible for letting the gold miners invade our territory, and he is responsible for lots of killings of Yanomami. Now he may become governor of Roraima again in October of 1990. Something must be done before that. Something must be done to solve our problem because Romero Juca will not solve it. He does not like us, so he will not do anything to solve or to improve our situation.

Do the international authorities and people from the United States think it is true what they always say that the demarcation of Yanomami land is a matter of money, that they do not have money to do it?

We here in the Demini area, we are alive. But I know that many others have died, and continue to die and will die more and more. Only the areas where you have a mission close to it or where you have a doctor assisting the Indians and a nurse -- and these are five or six areas only -- in those areas people will survive. Here we will survive, but we will be very few Yanomami. The others are going to die. So you people that I am sending this message to, I want you to do something - something real that helps us. I do not want lies. I want the truth.

I am also very worried about people abroad who I think are giving money to Brazil and helping Brazil, but not to take care of their Indians. This money that comes from abroad is helping the Brazilian government not to care for our Indians. I am very worried about that.

Non-Indians are like ants. I know that non-Indians like our resources. They say that we have gold. We have lumber, and they

say that they need that to help the people who live in the city. Well, we do not want them, and we do not want them here.

What we want is respect for our rights. We want them to leave us alone. We need help with regard to the health situation. In the beginning we did not need any help. We did not need any doctors, any medical doctors, any nurses or any medicine. But now we need doctors and nurses to help the Yanomami who are sick. We also need medicines because we used to cure ourselves only with shabori. Which is shamanism. But that is not enough anymore. And we need medical doctors and medicines and help from non-Indian people.

We are worried because the non-Indians are not very much worried about us. They think that we are a different race. Therefore, they want to isolate us. They think we are bothering their work. We are preventing them from working here, so they would rather have us isolated. They do not worry very much about what is going on with us.

Now the Chief of the Yanomami or Yanomami Tushawa (spiritual leader) wants to speak. He will say something about the Yanomami situation. The Chief will speak in his language. I, Davi Yanomami, will translate into Portuguese and you will translate into English.

He does not like to have his voice taped because the Yanomami have this tradition that when they die and the voice is dead, something left behind is no good.

He does not want gold miners here. Because he does not want to die because of the gold miners. He does not want to die because of the gold mining activities. He does not want gold mining activities killing children. He does not want them killing his people. He just wants to live as in the past.

The Chief is saying that he wants the little rivers here clean. He does not want them dirty. He wants the gold miners to respect them. He also does not want to live in a small area. He wants to live in a big area, where his community can grow and get bigger. And he also does not want roads. Because when they build roads in this area the Yanomami die and they suffer, he wants it to stay the way it is right now. So let them live the way they are living now.

The Yanomami do not have doctors, medical doctors like the non-Indians have. However, they have Shaboris, but not very many because many of them have died already. But Shaboris cure people by taking care of the souls. So they protect the children and the adults by not letting the illness come through them. That is how they work. So we want to be permitted to live like that.

If we can protect our children they will grow and there will be many others. If the government does not want to help, at least they should leave us alone. Do not let the gold miners get in. Without the gold miners, the garimpeiros, we can take care of our own health problems with our Shaboris.

Davi Kopenawa Yanomami
Demini,
Yanomami Territory
Brazil
September 17, 1990

Establishing The Rule Of Law For The Indian Peoples Of Brazil

by Ana Valéria N. Araújo Leitão*

In Brazil there are about 250,000 Indians, divided in some 200 different ethnic groups, most of which are very small, who traditionally occupy 526 areas, about 10% of the Brazilian territory (according to the Ecumenical Center for Documentation and Information - CEDI). The low population of Indians in a national population of 140 million people (0.2% of the total population) is a fundamental fact to keep in mind when considering the situation of Indian peoples in contemporary Brazilian history. The Indian population is spread throughout the country, even though a large concentration of them is in the Amazon region. This concentration resulted from the colonization process in Brazil, which has historically moved from the east coast to the west, slowly pushing the Indians towards the isolated regions closer to the Brazilian borders.

Today, Indian lands are often seen as large reservations of natural resources, likely to have mineral riches, which makes them a target for economic interests throughout the country. In a country where the majority of the population faces extreme poverty, Indian peoples are going through serious conflicts resulting from economic development policies that violate their rights.

BACKGROUND: EXCLUSIVE GOVERNMENT CONTROL OVER BRAZILIAN INDIAN AFFAIRS

From the very beginning of the Brazilian colonization process, the government undertook the role of setting the terms for interaction with native peoples and defining the rules of such interaction. Until very recent years, the official indigenist policy was driven by the idea that Indians were fated to lose their own identities, becoming ordinary members of the larger Brazilian society. The official policies were all aimed at the integration of Indians into the national economy as a cheap labor force and at the assimilation of Indians by the non-Indian world.

From the 1960's through the 1980's, the decision-making power regarding Indian rights fell under the control of the military, reaching its most critical point at the end of the 80's, under the "Calha Norte Project". That Project, created by the National Security Council (a governmental body controlled by the military), was to take over and develop the Amazon border regions. Based on the national security defense doctrine, which was behind every official policy in those days, the Project urged the integration of Indians and manipulated the land demarcation process involving Indian lands. The large territorial extent of some Indian areas and the fact that many of them were located in international border areas were cited as the main issue for review of the demarcation process and the violation of Indian rights.

From the beginning of the colonization process until 1970, only the government, civilian or military, set Indian policy for the country. The Catholic Church played an "assistance role" by providing missionaries and educational and health care services to some of the Indian communities, but there was no indigenous rights policy that was non-official.

THE MODERN ERA: REFORMING BRAZIL'S INDIAN LAWS

The year 1970, however, was marked by the first assembly of Indian peoples in Brazil. This was the first Indian initiative over which the State did not have control. Despite the power of the military, this assembly had a major repercussion within both the Indian world and the national society. It received much attention in the national press. Other Indian-initiated assemblies followed, opening a space for the Indians to learn about their rights and to organize themselves for a political struggle. For the first time in Brazil's history, a non-official Indian policy started to be drafted.

While the Indigenous movement emerged, several non-governmental organizations, comprised of non-Indians who supported Indian rights, were being established in the country. Indian leaders began to receive political recognition within the non-Indian context, and the first Indian was elected to serve in the House of Representatives of the National Congress.

In 1979 the Union of Indigenous Nations (UNI) was established. It was the first national organization directed exclusively by Indians. UNI had no link with the government or the Catholic Church, and was conceived as a national Indian organization, a symbolic point of reference for all Indian peoples in Brazil. It played a very important role in the larger process of reestablishing democracy in the country, specially during the period of 1987-1988 when the Brazilian Constitution was being written.

During the Constitution-making process, a coalition of Indians, NGOs, lawyers, anthropologists and other supporters was formed to fight for the inclusion of Indian rights into the text of the new Constitution. The National Constituent Assembly, which was in charge of drafting and voting on the text of the Constitution, took place while efforts were still being made to implement the official assimilationist policy. The result of the coalition's work was the "Indian Chapter" of the Constitution, which clearly opposed that policy. It eliminated the policy of distinguishing Indians according to the degree of their cultural adaption, and it disavowed the idea of forcible integration.

The new Constitution of Brazil recognizes the rights of Indians to maintain their social organization, customs, languages, beliefs and traditions. It defines a new concept of indigenous lands, guaranteeing protection for those lands needed for Indian peoples' physical survival and cultural development. It provides for the preservation of all natural resources necessary for Indians' well-being, according to their own uses, customs and traditions.

After the promulgation of the Constitution, several members of the coalition decided to establish a new NGO to serve as the legal office for Indian rights advocacy in Brazil. That new legal office, the Nucleus for Indigenous Rights (NDI), was based in Brasilia. A primary objective has been the consolidation of the new constitutional rights. NDI has an Executive Secretary and three non-Indian lawyers. They monitor the activities of the National Congress relating to Indian issues. They file lawsuits on behalf of Indian peoples for the protection and strengthening of their collective rights. As there are no Indian lawyers in Brazil to work in the legal defense of their own communities' rights, NDI has also established a program to assist the first Indian law student who is now studying at the Law School of the University of Goiania in the state of Goias. He is expected to graduate in 1995. He has been traveling to Brasilia for weekly meetings with the NDI lawyers to discuss topics raised in the classroom and other matters more related to Indian rights and environmental law.

In addition to the "Indian Chapter" of the Brazilian Constitution, the basis for indigenous legal rights in Brazil, there is another major legal instrument addressing Indian rights, the Indian Statute (Law 6001/73). This statutory law regulates the relations between national society and Indian peoples. The National Congress has been analyzing a bill aimed at changing this law in order to update and adapt it to the new Constitution. NDI is working on this law revision project.

THE DAILY STRUGGLE TO MAKE THE RULE OF LAW A REALITY FOR THE INDIANS OF BRAZIL

Unfortunately, the 1988 Constitution did not resolve all of the problems facing Brazil's Indians. Rather, the main issue continues to be whether the government will guarantee in practice the right of Indians to recognition of and control over their traditional lands. Official recognition -- both in law and in fact -- is a long process, often subjected to political pressures, in which Indians participate effectively in only a few of the steps. Further compounding these difficulties, powerful interests have lately been able to introduce a pernicious idea: that in Brazil, there is too much land for very few Indians. The process of indigenous land recognition now must always overcome this premise, by convincing the decision makers that the Indians actually need their territory. As if that were not enough, official recognition does not always imply prompt and peaceful possession by Indians of their lands. Indian areas are frequently invaded by farmers, gold prospectors, loggers and settlers, who simply ignore Indian peoples and their rights. Even the areas that are already physically demarcated are continuously harassed by expansion of economic fronts of the national society, which bring severe environmental destruction to those lands and disease and death to the Indian people.

One example of such destruction is the case recently brought to the Federal Court by NDI, regarding the rights of the Arawete and Parakana Indians of the State of Para. The southern region of Para has been the most affected by deforesting activities and illegal hardwood exploitation, especially mahogany. Mahogany is on the "Official List of Brazilian Flora Species Threatened with Extinction". It is estimated that at least half of the mahogany exploited in Para comes from Indian lands.

The Arawete and Parakana Indians live in neighboring areas in Para (Arawete-Igarape Ipixuna/985,000 hectares, Apyterewa/980,000 hectares, and Trincadeira Bacaja areas), which have already been officially identified and delimited by administrative acts of the president of FUNAI (the government Indian agency) and the Minister of Justice. The Arawete people has a population of 205 individuals and lives mainly on what they hunt and fish. When they were first contacted by FUNAI, in 1976, they had a population of 200 people, which in three months dropped to 120, due to epidemics caused by diseases that were suddenly introduced into their communities. The population recovered in the years that followed. The Parakana Indians are 156 individuals. Both the Arawete and the Parakana are among the Indian peoples of Para with the least contact with Brazilian society.

In 1986, logging companies began to invade these three neighboring Indian lands. Several rudimentary access roads were built and huge quantities of mahogany trees were cut down and taken away. In 1988, FUNAI, caught two large logging companies removing thousands of cubic meters of wood from these areas (the companies themselves estimated that 7,500 cubic meters of wood were being taken -- actually stolen -- on that occasion.) The Arawete and Parakana Indians firmly oppose the removal of hardwood from their lands.

Instead of taking steps to close down the logging operation, FUNAI simply made an "agreement" with these companies, according to which they had to pay for the wood. The agreed-upon price was much lower than the commercial price of the wood. This agreement not only harmed the Indians but also encouraged the continuation of the illegal and predatory exploitation of natural riches in Indian lands. These logging companies build a roadway stretching for about 500 km with several feeder roads inside those areas, that cut the forest in the direction of the fountainhead of the Bacaja River (Trincadeira Bacaja area), where several supporting bases were set up for removing mahogany from the area.

In August, 1992, FUNAI shifted its position and, in a joint operation with IBAMA (the governmental agency for environmental protection) and the federal police, seized part of the wood that was being illegally taken away from the Indian area. This operation was documented by the two agencies and the police. They declared that the activities of the logging companies were illegal.

According to the Brazilian Forest Code (Law 4771/65), all forests in Indigenous lands are subject to permanent preservation. The Brazilian Constitution declares that indigenous lands belong to the Federal State and that Indians have the rights of permanent possession and of exclusive use of all resources including the land, rivers and lakes of their territories. The Constitution also establishes that all acts involving the occupation or possession of Indian lands, or the exploitation of natural resources from the soil, river and lakes of Indian territories are null and void, without legal force.

Despite these legal provisions, and despite some law enforcement efforts by federal officials, the two logging companies and another major logging company have continued to extract mahogany and other hardwood species from the three Indian areas. At the urging of an

anthropologist and others who work with the Arawete and Parakana Indians, and alarmed by the devastating impacts of these illegal activities on the environment of their areas, NDI filed a federal lawsuit (called "Acao Civil Publica) against FUNAI, IBAMA and the three logging companies.

A federal judge granted the preliminary injunction requested by NDI and ordered on January 15, 1993 that these logging companies take all of their equipment, installations and employees out of the indigenous territories within ten days. The court's ruling established a daily fine that the companies must pay if they do not meet that deadline, and it ordered that the Federal Police arrest the owners of the logging companies if they do not comply with the judicial order. The judge also ordered the closing of the illegal roads opened by the logging companies and set a ten day deadline for FUNAI and IBAMA to establish permanent checkpoints where those roads enter Indian territories, in order to prevent the entrance of any unauthorized person or vehicle. The principal request for relief in this lawsuit, however, is that the logging companies be required to pay all costs and expenses for the preparation and execution of an environmental recovery plan for the devastated Indian areas.

This kind of lawsuit could prove to be the most effective means of stopping damage to the environment of Indian lands in Brazil. The most interesting aspect of this procedure is that there is no need under Brazilian law for NDI to prove its own relation to the damage. It is enough to prove that there is a collective (common) interest on the protection of the asset (the environment) which is being damaged by someone.

The legal fight is not, however, finished. The logging companies took an appeal to the Federal Court of Appeals, which partially stayed the trial court's order. NDI immediately took legal steps to try to reinstate the complete relief ordered by the trial court, and further appeals may be needed to finally settle some of these new legal issues.

There are other cases where Indian lands are being invaded and Indian environments are being destroyed. Hopefully the law of Brazil will uphold Indian rights and provide effective remedies. Through strong legal control over economic activities in indigenous lands in Brazil and elsewhere in the world, it should be possible to guarantee the basic rights and the survival of indigenous peoples. It is true, however, that until more reasonable patterns of development are broadly supported and adopted by the government of Brazil and other governments, the threat to those rights will continue to exist.

*Ana Valéria N. Araújo Leitão is a lawyer with the Núcleo de Direitos Indígenas (NDI), the legal office for Indian rights advocacy in Brazil. The views expressed in this article are her own, and are not necessarily shared by NDI.

**STATEMENT TO THE HOUSE SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS
ON BEHALF OF THE AMAZON ALLIANCE - A COALITION IN SUPPORT OF
INDIGENOUS PEOPLES AND THE ENVIRONMENT**

The Amazon Alliance for Indigenous Peoples and the Environment is a coalition of Amazonian indigenous, human rights and environmental organizations created in 1990 at an historic meeting in Iquitos, Peru. A recent conference held in Washington, DC broadened and strengthened the Alliance, which now includes forty organizations who share the concerns of indigenous peoples for the future of the Amazon (see annex for a partial listing of alliance members). An outcome of the conference has been an affirmation of these fundamental principles:

we hold that legal recognition and defense of the territorial rights of indigenous peoples is an essential component in the management and conservation of the Amazon;

we will seek effective participatory mechanisms to fulfill this fundamental principle that include directing technical and financial resources to indigenous-run projects and initiatives;

we believe that efforts to protect the Amazon should build upon and strengthen indigenous and other forest-dependent peoples' proposals for the management and conservation of the Amazon;

we recognize the need for research, actions and projects which advance the territorial, economic and civil rights of indigenous and forest-dependent peoples.

In keeping with these principles, and backed by a request from Brazilian indigenous leaders to the Alliance to make the demarcation of indian lands a top priority, we state:

The Amazon Alliance supports the legal recognition of Brazilian indigenous peoples' rights to land and access to their natural resources as essential for their cultural and physical survival. We call upon the Brazilian government to fulfill its stated constitutional obligation to demarcate indian lands, and to provide adequate political support for the demarcation process and the protection of demarcated areas. We also urge the U.S. State Department to closely monitor the demarcation process and to document any serious threats or delays in its 1993 human rights report.

Partial List of Alliance Members

Amanaka's Amazon Network
Cultural Survival
Environmental Defense Fund
Friends of the Amazon
Friends of the Earth
Healing Forest Conservancy
Oxfam America
Rainforest Action Network
Rainforest Alliance
Rainforest Defense Fund
Rainforest Foundation
Sierra Club Legal Defense Fund
South American Information Center
World Resources Institute
World Wildlife Fund

For more information on the Amazon Alliance please call:

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Nilo Cayucayo, South American Information Center at (510) 834-4263

INVASIONS OF INDIGENOUS RESERVES AND UNDEMARCATED INDIGENOUS LANDS IN NORTHERN MARANHÃO, BRAZIL

A Statement Submitted to the House Subcommittee on Western Hemisphere Affairs, Committee of Foreign Affairs
U.S. House of Representatives

July 14, 1993

by the

Commission on Human Rights, American Anthropological Association

Prepared by
Terence Turner
Professor of Anthropology, University of Chicago

The Commission on Human Rights of the American Anthropological Association salutes the Subcommittee for Western Hemisphere Affairs for holding this hearing on the important issue of the situation of indigenous peoples of Brazil. We wish to bring the attention of the Subcommittee to one of the most urgent cases of abuse of indigenous rights and invasion of indigenous lands in Brazil today. This is the situation of the indigenous peoples of Northern Maranhão State, in East-Central Brazil, specifically those of the Alto Turiaçu and Caru Indigenous Reserves and the undemarcated indigenous lands of the Awa-Guajá people. Our report has been compiled from information provided by members of our Association with first-hand familiarity of the situation, reports of human rights organizations that have investigated the case, official Brazilian Government documents, correspondence with private and public Brazilian agencies, and press accounts.

THE PRESENT SITUATION OF THE INDIGENOUS PEOPLES AND LANDS OF NORTHERN MARANHÃO STATE

In March 1993, 150 Awa-Guajá, Guajajara, Ka'apor, Krikati and Timbira Indians blocked the Carajás Railroad at a point near the Caru Indigenous Reserve in Northern Maranhão. The Railroad is part of the giant Grande Carajás iron-mining complex being developed in the Serra dos Carajás by the state-owned Companhia do Vale Rio Doce (CVRD) with the financial support of the World Bank and the European Economic Community (EEC). The project is located in Southeastern Pará and the adjoining area of Northern Maranhão States, near the city of Belém, located on the Amazon River.

The Indians blockading the Railroad demanded the immediate demarcation of the indigenous lands of the Awa-Guajá and Krikati, a demarcation required by the World Bank initial 1982 loan to the CVRD for the Grande Carajás iron-mining project. The CVRD had not provided the funds for the demarcation during the ensuing 11 years. During those 11 years, thousands of settlers, ranchers and loggers

During those 11 years, thousands of settlers, ranchers and loggers had invaded the indigenous lands, deforesting huge tracts of land within the reserves, and driving away many Indians from their traditional homes and land.

The CVRD responded to the Indians' desperate blockade of the Railroad by formally agreeing to supply the funds to demarcate the Awa-Guaaja lands by April 1993. Those funds, however, remain unspent to this day because the Brazilian Army, whose engineers carry out the surveying and marking of reserve boundaries, has refused to cooperate. Meanwhile, the invasion, environmental destruction, and forced dislocation of Indians continue unchecked.

A BRIEF HISTORY OF THE AWA-GUAJA AND THE ALTO TURIACU AND CARU INDIGENOUS RESERVES

The areas inhabited by indigenous peoples in Northern Maranhao have been subject to chronic invasion over the past two decades. In 1961, under pressure of increasing penetration of the forested area of Northern Maranhao by settlers following the construction of the Belem-Brasilia highway, the Federal government of Brazil created the Gurupi Forest Reserve. The Reserve, encompassing 1,674,000 hectares, was established to protect the unique pre-Amazonian forest and the indigenous inhabitants that still survive in that region. Part of the legally mandated function of Brazilian Forest Reserves is to "maintain the necessary environment for the life of indigenous peoples" (Law no. 4771, article 3). This decree, though never annulled, was never enforced, and the region continued to be penetrated by settlers and ranchers. These invaders have steadily cleared much of the forest, with an estimated 500,000 hectares cleared by 1991 (CPI 1991; Oren 1988).

The indigenous peoples who inhabited the area came under increasing pressure from these settlers. To deal with the steadily worsening situation, the Federal government in 1978 demarcated two indigenous reserves in the region: Alto Turiacu, 80% of which lies in the original Gurupi Forest Reserve; and Caru, which lies wholly within the Reserve. These two reserves, "confirmed" in 1982, of 530,524 and 175,000 hectares, respectively, have a combined indigenous population of some 1,000 members of the Ka'apor, Awa-Guaaja, Tembe, and Kren-ye nations. Most of the nomadic Awa-Guaaja, several bands of which remain uncontacted to date, move in areas outside of these reserves.

THE AWA-GUAJA

The Awa-Guaaja are a unique people, the last forest nomads of Amazonia. Recognizing the importance of protecting the Awa-Guaajara, a Federal government working group recommended that 276,000 hectares be demarcated as a reserve for the Awa-Guaaja in 1985. The Awa-Guaaja reserve was never established. An inadequate and half-hearted attempt to protect the last of the forest nomads

from local ranchers and settlers was made by then President Sarney, who proclaimed a "Gurupi Biological Reserve" of 341,650 hectares (down from the original 1,674,000 hectares of the Gurupi Forest Reserve) in 1988. The reserve comprised an area containing uncontacted Awa bands, although President Sarney's decree made no mention of Indians. At the time of Sarney's decree, half of this Gurupi Biological Reserve had already been invaded and deforested.

Later in 1988, President Sarney announced that 147,000 hectares were to be set aside as the permanent and inalienable possession of the Awa people. Within a few months of this announcement, still in 1988, a group of 36 ranchers, who jointly occupied 111,000 hectares of this land, succeeded in persuading Sarney to reduce the already inadequate Awa area by 60% to a mere 65,000 hectares.

In June 1992, a working group of the Brazilian Bureau of Indian Affairs (FUNAI), recommended that 118,000 hectares be demarcated as the Awa Indigenous Area. In July 1992, the Minister of Justice ordered the demarcation of the land. The presence of many heavily armed invaders in the area, however, intimidated FUNAI from carrying out the demarcation. In December 1992, FUNAI formally requested the Brazilian Army to conduct the demarcation. The Brazilian Army has recently made numerous statements opposing indigenous reserves on ideological grounds. It has refused until this writing, a full year after the original demarcation order, even to prepare a budget for the operation. Blaming the Army's failure to come up with a budget, the Companhia do Vale Rio Doce has declined to liberate the funds (US\$600,000) it is obligated by its loan agreement with the World Bank to provide to finance the demarcation. These were the funds it promised to the Indians who blockaded its rail line in March 1993 to make available by April.

If the Brazilian state fails to protect the Awa-Guaaja, they face the threat of extinction from the invasion of local ranchers and settlers. This would be a most tragic and disgraceful outcome for Brazil and the world community.

CONDITIONS UNDERLYING THE INVASIONS

Although the areas inhabited by indigenous peoples in Northern Maranhao have been subject to chronic invasion by settlers over the past two decades, the situation has attained crisis proportions only since 1989. The massive invasions of the past three years were stimulated by a scheme to sell off large areas of the demarcated indigenous reserves as well as the as-yet undemarcated Awa Indigenous Area to private buyers. Illegal titles to 200,000 hectares of Federally-owned land within the Gurupi Forest Reserve, 100,000 of them within the indigenous reserve of Alto Turiacu, have been sold through the same fraudulent land-title company in Belem. Most of the large ranches presently located within the Reserves and Guaaja lands were founded through purchases of fraudulent titles

through this scheme.

The economic value of the indigenous lands, in particular their timber cover, has attracted many buyers to Northern Maranhao. Timber values have been enhanced by the presence of the Grande Carajas project, which uses charcoal made from forest trees to fuel its smelters. Meanwhile, large number of landless rural workers, displaced by the big ranchers and development activities associated with the Grande Carajas project, have moved into the reserves and undemarcated indigenous lands.

These invading settlers now outnumber indigenous peoples of the areas. An estimated 300 households of poor settlers, or 1,300 people, had occupied the southern portion of the Alto Turiacu Reserve by the end of 1992, compared to the indigenous population of 750. Some 15% of the Alto Turiacu Reserve has now been deforested and occupied in this manner.

The poor settlers have made common cause with the ranchers and developers against the Indians. Most of the settlers are armed. The ranchers who have established themselves within the indigenous areas reportedly maintain a force of some 80 hired gunmen to deal with any indigenous opposition. The Indians are far weaker politically and militarily. An undetermined number of indigenous people have been killed: six cases are known within the last three years, but several indigenous people have appeared recently to report their survival of Awa-Guaja massacres in the area. Other Indians bold enough to protest the illegal invasions have reported death threats by ranchers or their gunmen.

The situation of the indigenous peoples and lands of Northern Maranhao exhibits, in microcosm, most of the social, political and economic factors responsible for the violation of indigenous rights, invasion of indigenous lands, and the destruction of their forest and riverine habitats throughout Brazilian Amazonia. As elsewhere in Amazonia, the presence of large development projects with international financing from the World Bank and/or other foreign sources of capital has been a major factor in worsening the situation for the indigenous peoples of Northern Maranhao.

The state-owned Companhia do Vale Rio Doce (CVRD) is largely financed by loans from the World Bank (\$300 million) and the European Economic Community (\$600 million). The World Bank loan was made on the explicit condition that all indigenous lands in the area of the CVRD's operations be demarcated and protected against desecration. The loan further specified that the CVRD finance the demarcation of indigenous lands. Those conditions continue to be flouted in the case of the Awa-Guaja, and violated in spirit in the cases of the Alto Turiacu and Caru Reserves, where demarcated areas are treated as open land available to any developer or settler.

Basing the iron-ore smelting operations of the CVRD's Great

Carajas project on charcoal from the neighboring forests adds further economic motivation for the continued illegal deforestation of the indigenous lands within the demarcated Alto Turiacu/Caru and undemarcated Guaja areas alike. Thus political and economic interests have succeeded in forestalling action by the Federal government agencies, such as the Brazilian Army and FUNAI, from fulfilling their legally mandated roles in the demarcation and protection of indigenous lands. The CVRD, which has no legal authority to act on its own in such matters, has thus been able to blame its failure to spend the money obligated for these purposes on the inaction of its sister government agencies. The result: the CVRD continues to profit from operations while indigenous areas are relentlessly and irreversibly despoiled and indigenous peoples are displaced, threatened or killed.

BRAZIL'S RESPONSIBILITY TO PROTECT INDIGENOUS LANDS AND PEOPLE OF NORTHERN MARANHÃO

Article 231 of the Federal Constitution of Brazil states that the demarcation and protection of indigenous lands and resources is the obligation of the Federal government. Neither the President of the Republic, the Brazilian Army, the Federal Courts, nor the Federal or Military Police, however, have made any effective attempt to control the invasions or expel the settlers and illegal loggers from the demarcated indigenous reserves. The Federal Police made one abortive foray in January 1991 into the Alto Turiacu Reserve at the urgent behest of native leaders and FUNAI. A seizure of some 20 logging trucks was made. However, the trucks were reportedly returned quickly to their owners and logging operations resumed.

Both indigenous peoples and FUNAI have made sporadic attempts to obtain redress from political and jural authorities. In January 1991, some 31 Ka'apor, Tembe, and Timbira Indians appealed to the State Legislature of Para for assistance in curbing the invasion of their lands on the basis that most of the timber being illegally taken from their reserves were being processed outside of Para in the frontier town of Paragominas. The Legislature made no response. In March 1992, a Federal judge for the District of Sao Luis, Maranhao, acting on a suit brought in 1989 by FUNAI, ordered all invaders of the Alto Turiacu Reserve to "immediately unoccupy" it. The judge declined to order the Federal Police to enforce his order, as he had the authority to do. His order was ignored.

An even more flagrant case of ineffective protection of indigenous lands and indigenous rights was the decision of the Supreme Court of Brazil (Supremo Tribunal de Justica) on November 21, 1992. In this case, the Court ruled that a large ranch of 40,000 hectares, located completely within the Awa Indigenous Area and the Gurupi Forest Reserve, had permanent rights to its holdings despite the fact that the location of the ranch within the Gurupi Forest Reserve directly violated the legal mandates associated with

the Reserve.

These cases illustrate the failure of the political, judicial and police authorities charged with enforcing the legal and physical security of indigenous rights and lands to do so. Without significant pressure from the international community, the prognosis for the protection of indigenous lands and indigenous peoples of Northern Maranhao is poor.

SUMMARY AND RECOMMENDATIONS

The invasions and illegal deforestation of the two demarcated indigenous reserves, Alto Turiacu and Caru, demonstrate that "demarcation" (surveying and marking of boundaries by an officially designated team), even where accompanied by official legal "confirmation", means little or nothing when the protection and enforcement of demarcated indigenous reserves are neglected. Additionally, the failure of authorities to carry out the demarcation of traditional foraging areas of the nomadic Awa-Guarja, despite the calls for demarcation in studies and directives by government agencies, exemplifies the Brazilian government's tendency to procrastinate the demarcation of indigenous areas where economic interests are involved. Delays in demarcating indigenous lands as well as failing to protect those demarcated indigenous lands have dire consequences for indigenous peoples.

The executive and judicial arms of the Federal government, and the government-owned Companhia do Vale Rio Doce, with its international financial backers, share responsibility with local Brazilian business interests and land invaders for the violations of the lands, livelihoods and constitutionally-guaranteed rights of the indigenous groups of Northern Maranhao. The only answer to such situations is to insist that the Brazilian government fulfill its responsibility to act through its various agencies to assure compliance of its state-owned development projects with the indigenous and environmental protection provisions of World Bank loans and other international financing agencies, and its own constitution. Where the Brazilian government fails to take such action or obstructs or prevents the fulfillment of these conditions, the World Bank and other international lenders should be obliged to withdraw their loans.

We therefore recommend: (1) the US Government call upon the Brazilian Government to fulfill its constitutional responsibilities to protect the rights, lands, lives and resources of the indigenous groups of Northern Maranhao, specifically those occupying the reserves of Alto Turiacu and Caru and the traditional foraging territories of the Awa-Guarja both within and outside of the as-yet undemarcated Awa Indigenous Area; (2) the Brazilian Government should fulfill its obligations under International Law to protect the lives, rights and lands of these same groups; and (3) the US and other governments supporting the World Bank should demand that the agency immediately withdraw its financial support for the Brazilian state company, Companhia do Vale Rio Doce, until the appropriate agencies of the Brazilian state comply with their legal responsibilities to demarcate and protect the indigenous areas of Northern Maranhao, and expel all illegal invaders of these areas. Further, the Brazilian Government should bring those guilty of criminal offenses against indigenous lives, lands and rights to justice and compensate indigenous groups for the grievous damages already inflicted upon them.

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July 14, 1993*

Mr. Chairman, first I want to congratulate you for convening this timely and important hearing.

The struggle for indigenous rights now taking place in Brazil and elsewhere in Latin America may properly be seen as the "third generation" of a human rights revolution in the latter part of the 20th Century whose success is the very guarantor of democracy in our hemisphere.

Let me explain what I mean by a "third generation" rights issue. The opening battle for human dignity came with the fights carried out in the 1970s and 1980s against oppressive military regimes and their awful record of massive human rights violations. Then came a period of democratic transition and an attempt to confront these regimes' legacies by putting an end to military impunity.

Today, as some Latin countries prepare for their second, third or even fourth consecutive presidential elections, a new but very old challenge remains, the legal protection of indigenous peoples and their incorporation--on their own terms--into the political system so that they might exercise greater control over their lives, lands and resources.

It is, of course, very true that our own policies here in the United States with regards to native peoples have often been shortsighted and destructive. There are those who might question, both here and abroad, that the United States should involve itself with indigenous issues elsewhere.

There are, I think, some important policy reasons for the United States not to sit on the sidelines in this looming battle for native empowerment. A primary U.S. policy goal is, of course, the advancement of democracy in our hemisphere and around the planet.

The effective empowerment of indigenous peoples is in many countries a key component that can work for democratic consolidation if it is done right, or ethnic and racial strife, if it is not.

This is particularly true in countries in which indigenous peoples are either a numerical, though largely dispossessed, majority, or a significant minority of the population. One only has to look at Guatemala, Ecuador, Peru and Bolivia to understand the challenges ahead, if democratic participation is not to be circumscribed to urban areas of relative privilege.

To be blunt, the prospects for a democracy that limits effective political participation to the geographic areas served by municipal garbage collection are dim indeed. This is all the more the case in countries with significant rural populations.

A second U.S. policy interest is, of course, that of environmental protection, and--given the relatively fewer numbers of indigenous peoples in Brazil vis-a-vis the dominant society--in the case we are examining today this fact is also of great import.

In Brazil, as elsewhere, indigenous groups live in areas that are both threatened with destruction and that contain much of the world's treasure of biodiversity. Indigenous groups are in the forefront of efforts to protect these irreplaceable natural legacies and, because their fate directly affects that of the environment, their well-being affects us all.

In Brazil, the demarcation of native lands is essential for the physical and cultural survival of indigenous peoples. Of a total population of approximately 250,000 people, around 180,000--some 72 percent--of Brazil's indigenous peoples live in the Amazon region today.

Yet, the demarcation of these lands--the legal recognition of indigenous property rights, the setting of boundaries of their territories and the provision of state protection of these lands from settlers, gold prospectors and commercial interests--is a process fraught with delays and threats of violence.

The Brazilian Constitution of 1988 requires that the government complete the demarcation of all native lands by October 5 of this year. According to statistics provided by Oxfam, however, of the 510 indigenous territories in Brazil, only in 272 has the process of demarcation been completed. Nineteen demarcation efforts have been held up by the Justice Ministry and 129 regions have yet to be identified.

The demarcation question is not only one of Brazilian law, but also of solemn international commitments. Speaking before the United Nations as the International Year of Indigenous People was being inaugurated, Brazilian permanent representative Ambassador Ronaldo Mota Sardenberg said

"In Brazil, an important part of the effort to promote protect the human rights of indigenous people is the program for the demarcation of lands. Ensuring that indigenous lands are securely demarcated and respected by all is a major responsibility... For Brazil, fulfilling the targets established by the Brazilian Constitution will continue to be at the top of the agenda."

At the urging of Sen. Alan Cranston, whom I had the pleasure of serving as a member of the professional staff of the Senate Foreign Relations Committee, and several other senators--including now Vice President Gore--the demarcation issue was raised by President Bush in his meeting last June with then President Collor de Mello. Collor reportedly repeated to Bush the same assurances he gave during the same visit to Senator Cranston--that Brazil would move forward on demarcation. Furthermore, at last year's Earth Summit the protection of indigenous populations was clearly defined in international human rights law and was codified in Agenda 21, Chapter 25, an action document endorsed by Brazil.

These commitments stand in stark contrast to recent actions taken by the Brazilian government, actions that put the very survival of Brazil's indigenous communities at risk. Consider:

In April the Brazilian Minister of Justice suggested that he would not allow the demarcation of any area which was already subject to some degree of invasion by outsiders. This just a month after a decision to revisit the demarcation of the Arara Indian territory in the state of Para once the Justice Ministry had already approved a demarcation plan. According to Oxfam, 84 percent of the demarcated lands are suffering from some degree of invasion.

In June Sidney Possuelo, the head of FUNAI, the State Indian Agency, resigned as a result of pressure from economic and other interests who opposed his efforts in the demarcation of indigenous regions along the frontier. FUNAI's budget has also been slashed by 90 percent, ensuring inadequate support for the protection of indigenous lands already demarcated. FUNAI's future direction is uncertain and a cause for concern.

Forums such as this one today help to raise international awareness of the threats facing Brazil's indigenous peoples, while at the same time sending a strong message to the Brazilian government and a welcome sign of support to Native Americans. It has been said that there is no real constituency for international indigenous issues in Washington, and therefore these will always be relegated to the lower rungs of our interest.

This hearing today shows these voices are wrong. As we deliberate here, we are accompanied by the hundreds of thousands of Brazilian indigenous people who may have an imperfect understanding of the modern world around them, but share an all-too-informed experience of what powerlessness and other-world indifference mean to them. We are also accompanied by the 30 to 40 million indigenous people in our hemisphere whose homes may not be in the Amazon region, but whose hopes and aspirations also reflect the need for our continuing interest.

So the question remains, what can we do?

With regard to the situation in Brazil, I think we should support the demands of indigenous groups that they be allowed to demarcate their own lands in the absence of prompt government action. The Ministry of Justice should also be urged to recognize all indigenous lands. The Brazilian government ought to be encouraged in the strongest possible terms to provide adequate funding for further demarcation and the protection of areas already legally recognized, and to respect the commitments made under the constitution and to international parties. Finally, a new but timely deadline for the demarcation of these lands ought to be urged.

Mr. Chairman, there are other things we ought to consider in pondering the rights and well-being of indigenous peoples. For the first time this year's annual State Department human rights report included expanded reporting on the rights of indigenous peoples, a requirement that came with the passage of the FY'93 Foreign Operations Appropriations bill signed into law by President Bush late last year.

The Cranston amendment, whose adoption was assured in conference with the help of Rep. John Porter, co-chairman of the Congressional Human Rights Caucus, required the report to "describe the extent to which indigenous peoples are able to participate in decisions affecting their lands, cultures, traditions and the allocation of natural resources, and assess the extent of the protection of their civil and political rights."

Because the bill became law late in the year, when the primary guidelines for human rights reporting had already gone to posts abroad, the report this year fell short of full compliance with the intent and purpose of the legislation. One appropriate step would be to urge Secretary of State Christopher to instruct the human rights bureau to ensure the production of a far more comprehensive report this year.

I might draw your attention to a first-rate report prepared in 1991 by the Congressional Research Service under the direction of Latin scholar Nina Serafino, "Latin American Indigenous Peoples and Considerations for U.S. Assistance." The paper shows that U.S. aid efforts, while providing limited assistance to indigenous peoples, falls far short of the effort needed to help secure their well-being and incorporation into the democratic process.

As the Agency for International Development and other institutions seeks to retain their relevancy in the post-Cold War era, particularly in the areas of democracy-building and sustainable development, there needs to be an increased effort on the human rights and welfare of indigenous peoples.

Programs that facilitate indigenous institution building; economic empowerment; a strengthening of cultural identity; increased technical and professional training; the strengthening of legal rights, and greater policy dialogue with governments are among those needed to promote the well-being of these people and to assist with their incorporation into the political and social life of new and emerging democracies.

Furthermore, as countries in Central and South America seek to demilitarize their societies and strip their militaries of an internal security function, administration of justice programs designed to support the creation of local law enforcement agencies can help empower indigenous communities provide for their own security and safety.

Groups such as the Center for Democracy, with its path-breaking efforts in the creation of a hemisphere-wide indigenous parliament, and Cultural Survival, both practical and innovative in its approach, have been working to promote the well-being of indigenous people. This work, besides being the right thing to do, is fully consistent with long-term U.S. interests. Shrinking resources and a lack of understanding in Washington about the cultural aspects of oppression and misery threaten this work.

Critics will point to these and other efforts and fret that too many demands may be placed by indigenous peoples on fragile and new democracies. The new awareness and assertiveness of native groups, however, suggests that we cannot stand idly by. The just demands posed by these peoples have been posited overwhelmingly through non-violence and through reason. They will be ignored any more only at a decided risk to ourselves and to our planet.

Thank you.



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